

Report and Order Terminating Supervised Release
Prior to Original Expiration Date**UNITED STATES DISTRICT COURT**

for the

DISTRICT OF UTAH

UNITED STATES OF AMERICA

v. Criminal No. 1:02-CR-00013-002-TS

MICHAEL JOSEPH BROWN

On October 22, 2003, the above-named was sentenced to 37 months custody and 36 months supervised release. Mr. Brown began his term of supervised release on February 2, 2005. The defendant has complied with the rules and regulations of supervised release and is no longer in need of supervision. It is accordingly recommended that the defendant be discharged from supervision.

Respectfully submitted,

Eric Anderson
United States Probation Officer

Pursuant to the above report, it is ordered that the defendant be discharged from supervision and that the proceedings in the case be terminated.

Dated this 13th day of September, 2006.Ted Stewart
United States District Judge

**Report and Order Terminating Supervised Release
Prior to Original Expiration Date**

2005 SEP 13 P 3:50

UNITED STATES DISTRICT COURT

for the

DISTRICT OF UTAH

UNITED STATES OF AMERICA

v. Criminal No. 1:03-CR-00065-001

BRAD JOSHUA PEREZ

On September 17, 2003, the above-named was sentenced to 18 months custody, and on December 10, 2004, began his three-year term of supervised release. The defendant has complied with the rules and regulations of supervised release and is no longer in need of supervision. It is accordingly recommended that the defendant be discharged from supervision.

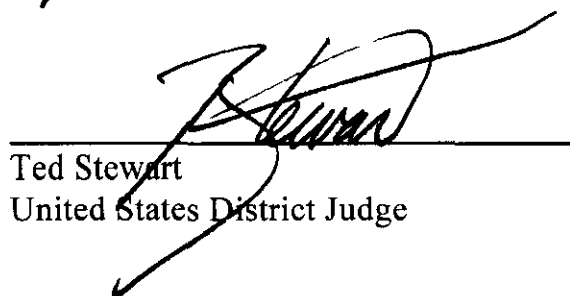
Respectfully submitted,



Eric Anderson
United States Probation Officer

Pursuant to the above report, it is ordered that the defendant be discharged from supervision and that the proceedings in the case be terminated.

Dated this 13th day of September, 2006.



Ted Stewart
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

BILL BRANDEN SPITLER,

Plaintiff,

vs.

OGDEN CITY CORPORATION (Ogden
City Police Department), a Municipal
Corporation, et al.,

Defendants.

ORDER DENYING MOTION TO
FILE ADDITIONAL
MEMORANDUM

Case No. 1:03cv00119

The plaintiff, Bill Branden Spitler, has moved this court for leave to file an additional memorandum to address new issues raised in the defendants' Reply in Support of Defendants' Motion for Summary Judgment, filed September 8, 2006.

The court concludes an additional memorandum will not substantially aid the court in deciding this case. In his motion, Mr. Spitler argues the need for clarification on evidence admissibility issues and objects to what he considers to be "untrue" and "incorrect" characterizations of his opposition to the defendants' motion for summary judgment. Mr. Spitler points to no other new issues raised in the defendants' reply.

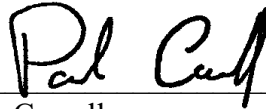
Although the court appreciates Mr. Spitler's concerns, the court is confident it can

correctly assess the issues based on the memoranda already submitted by the parties. The goal of efficiency would not be served by additional filings. If the court finds that it needs clarification at some point, the court will ask for supplemental briefing or will wait for the parties to illuminate the issues at the motion hearing set for October 17, 2006.

The court, therefore, DENIES the plaintiff's motion [#75].

DATED this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge

UNITED STATES DISTRICT COURT

Nothorn

FILED District of

Utah

UNITED STATES OF AMERICA

V.

Steven Paul Stefaniak

2006 SEP 14 A 10: 02

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 1:04CR000066-001

USM Number: 00484-068

Scott Wilson

Date of Original Judgment: 6/1/2005

(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- ☒ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ☒ pleaded guilty to count(s) One of the Indictment
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|--------------------|--|---------------|-------|
| 18 USC § 922(g)(1) | Possession of a Firearm by a Convicted Felon | | 1 |

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/12/2006

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

U.S. District Judge

Name of Judge

Title of Judge

9-13-2006

Date

DEFENDANT: Steven Paul Stefaniak
CASE NUMBER: DUTX 1:04CR000066-001

Judgment — Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of

30 Months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant be incarcerated at the facility, FCI Milan, Michigan.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Steven Paul Stefaniak
CASE NUMBER: DUTX 1:04CR000066-001

Judgment—Page 3 of 6

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of
36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

DEFENDANT: Steven Paul Stefaniak
CASE NUMBER: DUTX 1:04CR000066-001

Judgment—Page 4 of 6

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall provide the probation office access to all requested financial information.
2. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
3. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Steven Paul Stefaniak
CASE NUMBER: DUTX 1:04CR000066-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

The Court orders the remaining balance of the fine, originally imposed on 6/1/2005 cancelled. The defendant is responsible for the originally imposed Special Assessment Fee of \$100, which was imposed 6/1/2005.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Hon. Tena Campbell

COURT REPORTER: Ray Fenlon

COURTROOM DEPUTY: Mary Jane McNamee

INTERPRETER:

CASE NO. 1:04-cr-0066 and 1:06-cv-0029

USA v Steven Paul Stefaniak

Approved By: _____

APPEARANCE OF COUNSEL


Pla Trina Higgins
Dft Scott Wilson

DATE: 09/12/2006

MATTER SET: Motion to Vacate Sentencing

DOCKET ENTRY:

The dft is present with cnsl and in custody. Dft's cnsl informs the Court that the dft is withdrawing his claims in his original petition. Dft's informs the Court of the dft's requests. The Court cancels the outstanding balance of the dft's fine, which was originally imposed on 06/01/2005. Dft's 2255 motion to vacate sentence is granted in part and denied in part. The Court recommends to the BOP that the dft serve his sentence at the facility FCI Milan, Michigan. The dft requests to be released from custody, to allow him to attend to financial matters. The Court denies the dft's request to be released from custody and the dft is remanded to the custody of the USMS. The Court will execute the minute entry.


Tena Campbell
United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

JACK R. YOUNGS, JAMES G. CORELL,
WILLIAM R. McDAVID, and MARGARET
B. McDAVID,

Plaintiffs,

vs.

JACK BEHNKEN, NANCY BEHNKEN,
JOHN BEHNKEN, SANDI BEHNKEN,
WILLIAM BEHNKEN, AMERICAN
NUTRTITION, INC., a Utah corporation;
ROCKY MOUNTAIN MILLING, a Utah
limited liability company; SOLAR
ENGINEERING LTD., a Utah limited
partnership,

Defendants/Counterclaim Plaintiffs,

vs.

JACK R. YOUNGS, JAMES G. CORELL,
WILLIAM R. McDAVID, MARGARET B.
McDAVID, and BOWLES RICE McDAVID
GRAFF & LOVE, a West Virginia law firm.

Counterclaim Defendants.

ORDER GRANTING PRE-
JUDGMENT AND POST-
JUDGMENT INTEREST ON
AWARD, AND DENYING
ATTORNEYS' FEES

Case No. 1:04-cv-00183

This matter is before the court on the Defendants' Objections to Plaintiffs' Proposed Judgment. After reviewing the documents submitted by both parties, the court grants the plaintiffs pre-judgment and post-judgment interest on their award, but declines to grant attorneys' fees.

BACKGROUND

For purposes of this order, familiarity with the facts, as outlined in this court's earlier Order on Motions to Confirm and Vacate Arbitration Awards, is presumed. The court entered this order on August 9, 2006, correcting a computational error but otherwise confirming the arbitration award in all respects. On August 15, 2006, the plaintiffs served defense counsel with a proposed judgment based on the court's confirmation of the arbitration award, reflecting pre-judgment and post-judgment interest as well as attorneys' fees. On August 21, 2006, the defendants' filed their objections to the plaintiffs' proposed judgment with the court. The court construes this document as a motion requesting the court to deny pre-judgment interest and attorneys' fees to the plaintiffs.

DISCUSSION

I. Pre-Judgment Interest

The court grants the plaintiffs pre-judgment interest, as the plaintiffs' losses were fixed and mathematically calculable as of the date of the arbitration award. In diversity cases, state law governs prejudgment interest issues.¹ Under Utah law, courts grant prejudgment interest where

¹See, e.g., *McNickle v. Bankers Life & Cas. Co.*, 888 F.2d 678, 689 (10th Cir. 1989).

“the damage is complete, the loss can be measured by facts and figures, and the amount of loss is fixed as of a particular time.”² The damages must be “calculable through a mathematically certain procedure.”³ Only if damages “cannot be calculated with mathematical accuracy, such as in the case of personal injury, wrongful death, defamation of character, false imprisonment, etc.,” is prejudgment interest not proper.⁴ Grants of prejudgment interest are meant “to compensate a party for the depreciating value of the amount owed over time and, as a corollary, [to] deter[] parties from intentionally withholding an amount that is liquidated and owing.”⁵ Arbitration debts are appropriate for grants of post-award, pre-judgment interest.⁶

In this case, the arbitration award of December 30, 2005, fixed both the value of the plaintiffs’ shares and the date by which the award was to be paid. The defendants argue the court’s correction of the arbitrator’s computational error “demonstrates that there was no clear or fixed amount due and owing as of the date of the arbitration award.”⁷ This argument misconstrues the nature of the court’s order. The court’s modification only changed the arbitration award to reflect the actual value of the shares owned by the plaintiffs—it had no effect

²*Andreason v. Aetna Cas. & Sur. Co.*, 848 P.2d 171, 177 (Utah Ct. App. 1993).

³*Id.*

⁴*Bjork v. April Indus., Inc.*, 560 P.2d 315, 317 (Utah 1977).

⁵*Trail Mountain Coal Co. v. Utah Div. of State Lands & Forestry*, 921 P.2d 1365, 1370 (Utah 1996).

⁶*See, e.g., Indus. Risk Ins. v M.A.N. Gutehoffnungshutte GmbH*, 141 F.2d 1434, 1446–47 (11th Cir. 1998); *Fort Hill Builders, Inc. v. Nat’l Grange Mut. Ins.*, 886 F.2d 11, 14–15 (1st Cir. 1989).

⁷Defendants’ Objections to Plaintiffs’ Proposed Judgment, Docket No. 95, at 3 (Aug. 21, 2006).

on the certainty of the plaintiffs' award or the ability of the award to be calculated "through a mathematically certain procedure."⁸ The value of the plaintiff's shares was fixed as of the date of the arbitration award, and the court confirmed the arbitrator's valuation. Further, the parties did not dispute the percentage of shares owned by the plaintiffs. Because these figures were known as of the date of the arbitration award, the amount owed could have been calculated with precise mathematical accuracy had either party chosen to do so. Accordingly, the arbitration award constitutes an amount sufficiently complete, measurable, and fixed, to be subject to pre-judgment interest under Utah law.

The court finds the plaintiffs are entitled to pre-judgment interest at the rate of 10% per annum, as provided for in Utah Code Ann. § 15-1-1. The arbitration award was to be paid to the plaintiffs thirty days after December 30, 2006, the date of the award. The court, therefore, grants the plaintiffs prejudgment interest from January 29, 2006, on the judgment amount, \$6,748,476.57.

II. Post-Judgment Interest

The defendants do not dispute the plaintiffs' entitlement to post-judgment interest, and neither party disputes the manner in which this interest should be determined. Courts with diversity jurisdiction apply the post-judgment interest rate set forth in 28 U.S.C. § 1961.⁹ The plaintiffs, therefore, are entitled to the statutory rate of post-judgment interest set forth in § 1961.

⁸*Andreason*, 848 P.2d at 177.

⁹*See Everaard v. Hartford Accident & Indem. Co.*, 842 F.2d 1186, 1193–94 (10th Cir. 1988).

III. Attorneys' Fees

The court declines to grant attorneys' fees and costs to the plaintiffs. The court did not address the issue of attorneys' fees in its Order on Motions to Confirm and Vacate Arbitration Awards, and the plaintiffs have not separately moved this court to do so. Utah Code Ann. § 78-31a-126(3) provides the court "may" award attorneys' fees and costs in matters such as this. However, according to local rules, motions for attorneys' fees

must be filed and served within thirty (30) days after (i) entry of a judgment or (ii) an appeals court remand that modifies or imposes a fee award. . . . The motion must (i) state the basis for the award; (ii) specify the amount claimed; and, (iii) be accompanied by an affidavit of counsel setting forth the scope of the effort, the number of hours expended, the hourly rates claimed, and any other pertinent supporting information that justifies the award.¹⁰

The plaintiffs have filed no such motion. Even if the court considered the Plaintiffs' Response to Defendants' Objections to Proposed Judgment to constitute a motion for attorneys' fees and costs, the motion wholly fails to comply with the requirements of this rule. Even after the defendants pointed out the plaintiffs' request failed to comply with local rules,¹¹ the plaintiffs made no substantive response or attempt to comply. The plaintiffs also requested attorneys' fees in their Motion to Confirm Arbitration Award, but the plaintiffs failed to set out the grounds supporting a grant of attorneys' fees in that motion. The court, therefore, declines to grant attorneys' fees and costs to the plaintiffs.

CONCLUSION

The court GRANTS the plaintiffs pre-judgment interest on the award amount

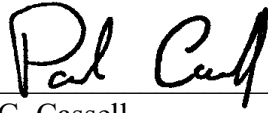
¹⁰DUCivR 54-2(f).

¹¹See Defendants' Objections to Plaintiffs' Proposed Judgment, Docket No. 95, at 3 (Aug. 21, 2006).

(\$6,748,476.57) from January 29, 2006, at a rate of ten percent per annum. Additionally, the court GRANTS the plaintiffs post-judgment interest on the award amount at the statutory rate set forth in 28 U.S.C. § 1961. However, the court DECLINES to grant attorneys' fees and costs to the plaintiffs.

DATED this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge

UNITED STATES DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

Tammy Dean Garcia

Case Number: DUTX 1:05CR000118-004

USM Number: 131169-081

Robin K. Ljungberg

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) Is - Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|-----------------|---|---------------|-------|
| 21USC§843(b) | Use of Communication Facility in Committing a Drug Trafficking Offense | | Is |

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 3 ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/11/2006

Date of Imposition of Judgment

Dee Benson

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

9-12-2006

Date

DEFENDANT: Tammy Dean Garcia
CASE NUMBER: DUTX 1:05CR000118-004

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

48 months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant participates and completes the 500 hour intensive drug treatment program. Secondly, the Court recommends a facility where the defendant can complete her college education.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ ☐ a.m. ☐ p.m. on _____
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Tammy Dean Garcia
CASE NUMBER: DUTX 1:05CR000118-004

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) *the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;*
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Tammy Dean Garcia
CASE NUMBER: DUTX 1:05CR000118-004

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115.00 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment, nor frequent business where alcohol is the chief item of order.

DEFENDANT: Tammy Dean Garcia

CASE NUMBER: DUTX 1:05CR000118-004

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| | | | |
|---------------|-------------------|-------------|--------------------|
| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
| TOTALS | \$ 100.00 | \$ | \$ |

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss*</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|--------------------|----------------------------|-------------------------------|
|----------------------|--------------------|----------------------------|-------------------------------|

| | | | | |
|---------------|----|------|----|------|
| TOTALS | \$ | 0.00 | \$ | 0.00 |
|---------------|----|------|----|------|

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Tammy Dean Garcia
CASE NUMBER: DUTX 1:05CR000118-004

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

2006 SEP 13 P 2:32

DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

162 NORTH FAIRWAY DRIVE, NORTH
SALT LAKE, UTAH;

157 WEST PARK SHADOWS COURT,
BOUNTIFUL, UTAH,

Defendants.

1:05CV00010-DB

ORDER TO DISMISS THE ASSETS
162 NORTH FAIRWAY DRIVE, NORTH
SALT LAKE, UTAH AND
157 WEST PARK SHADOWS COURT,
BOUNTIFUL, UTAH
WITH PREJUDICE

JUDGE: DEE BENSON

Based on the Motion to Dismiss the Assets 162 North Fairway Drive, North Salt Lake,
Utah and 157 West Park Shadows Court, Bountiful, Utah, with prejudice, accompanying
memorandum, and good cause appearing,

IT IS HEREBY ORDERED, that the assets 162 North Fairway Drive, North Salt Lake,
Utah and 157 West Park Shadows Court, Bountiful, Utah, are dismissed with prejudice from this
civil Verified Complaint for Forfeiture *In Rem*.

DATED this 13th day of September, 2006.

BY THE COURT:


DEE BENSON, Judge
United States District Court

MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Hon. Bruce S. Jenkins

COURT REPORTER: Mindi Powers

COURTROOM DEPUTY: Michael R. Weiler

INTERPRETER: None

RECEIVED

SEP 11 2006

CASE NO. 5-NC-112 BSJ

Borsch v. America Online

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

Approved By: _____

APPEARANCE OF COUNSEL

Pla Loren M. Lambert
Dft Gregory W. Stevens

DATE: September 1, 2006, 1:44 PM

MATTER SET: Motion Hearing re: to strike

(9 mins)

DOCKET ENTRY:

Argument & discussion heard. Crt rules:

- Denies, motion to strike.

MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Hon. Bruce S. Jenkins

COURT REPORTER: Mindi Powers

COURTROOM DEPUTY: Michael R. Weiler

INTERPRETER: None

RECEIVED

SEP 11 2006

CASE NO. 5-NC-112 BSJ

Borsch v. America Online

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

Approved By: _____

APPEARANCE OF COUNSEL

Pla Loren M. Lambert
Dft Gregory W. Stevens

DATE: September 1, 2006, 1:44 PM

MATTER SET: Motion Hearing re: to strike

(9 mins)

DOCKET ENTRY:

Argument & discussion heard. Crt rules:

- Denies, motion to strike.

MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Hon. Bruce S. Jenkins

COURT REPORTER: Mindi Powers

COURTROOM DEPUTY: Michael R. Weiler

INTERPRETER: None

RECEIVED

SEP 11 2006

CASE NO. 5-NC-112 BSJ

Borsch v. America Online

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

Approved By: _____

APPEARANCE OF COUNSEL

Pla Loren M. Lambert
Dft Gregory W. Stevens

DATE: September 1, 2006, 1:44 PM

MATTER SET: Motion Hearing re: to strike

(9 mins)

DOCKET ENTRY:

Argument & discussion heard. Crt rules:

- Denies, motion to strike.

FILED
DISTRICT COURT

2006 SEP 13 P 2:32

RICK D. ROSKELLEY, ESQ., Utah Bar # 7772
JEFFREY S. JUDD, ESQ., Utah Bar #8731
LITTLER MENDELSON
Attorneys for Defendant
3960 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169.5937
Telephone: 702.862.8800
Fax No.: 702.862.8811

RANDALL G. PHILLIPS, ESQ., Utah Bar #6311
PHILLIPS LAW OFFICE, LLC
Attorney for Plaintiff
2510 Washington Blvd., Suite 200
Ogden, UT 84401
Telephone: 801.621.6546
Fax No.: 801.393.3451

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

TERRY VINSON,

Plaintiff,

vs.

BARLOW HEATING AND AIR
CONDITIONING,

Defendant.

Case No. 1:05-CV-00120-DB

**ORDER APPROVING REVISED
STIPULATED DISCOVERY PLAN**

Judge Dee Benson

This matter comes before the Court on the Stipulation filed by the parties to extend the time for discovery, and other deadlines for approximately ninety (90) days, as follows:

1. Fact discovery will be completed no later than **December 15, 2006**.
2. Expert Discovery – Liability expert discovery due no later than **December 15, 2006**, Damages 30 days after report, **January 15, 2007**.
3. Deadline for filing dispositive or potentially dispositive motions on **January 31, 2007**.

1 4. Reports under Rule 26(a)(2) from retained experts on the issue of liability will be due
2 **November 10, 2006.**

3 5. Reports under Rule 26(a)(2) from retained experts on the issue of damages will be
4 served, by Plaintiff, 30 days after the Court's ruling on any dispositive motions, and, by Defendant,
5 20 days after Plaintiff's report is submitted. If no dispositive motions are filed, reports under Rule
6 26(a)(2) from retained experts on the issue of damages will be submitted, by Plaintiff, on or before
7 **January 15, 2007**, and, by Defendant, on or before **February 15, 2007.**

8
9 6. Pretrial disclosures pursuant to Rule 26(a)(3) will be submitted by Plaintiff on or before
10 **April 23, 2007**, and by Defendant on or before **May 7, 2007.**

11 7. Special Attorney Conference shall take place no earlier than **May 21, 2007.**

12 8. Settlement Conference shall take place no earlier than **May 21, 2007.**

13 9. Final Pretrial Conference shall take place no earlier than **June 4, 2007.**

14 10. This case will be ready for jury trial no earlier than **June 18, 2007.**

15 11. The estimated length of the trial is four (4) days.

16
17 Based on the representations set forth in the parties' Stipulation, and good cause appearing, the
18 parties' Revised Stipulated Discovery Plan is GRANTED.

19 IT IS SO ORDERED this 13th day of Sept., 2006.

20
21 Dee Benson
22 DEE BENSON
23 U.S. DISTRICT JUDGE

24 APPROVED BY:

25 /s/ Randall G. Phillips
26 Randall G. Phillips
27 Attorney for Plaintiff

28 Dated: September 6, 2006

APPROVED BY:

LITTLER MENDELSON

Rick D. Roskelley
Rick D. Roskelley
Jeffrey S. Judd
Attorneys for Defendant
Dated: September 7, 2006

Firmwide: 81437471.1 037266.1044

2.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH NORTHERN DIVISION

LEONIDA BREWER,

Plaintiff,

vs.

CORNERSTONE NUTRITIONAL
LABS, L.L.C., a limited liability
corporation, CORNERSTONE
RESEARCH & DEVELOPMENT,
INCORPORATED, a Delaware
Corporation, BARBARA SEDGWICK,
an individual, and JESUS
HERNANDEZ NOLAZCO, an
individual,

Defendants.

SCHEDULING ORDER

Case No. 1:05CV146

District Judge Paul Cassell

Magistrate Judge Brooke C. Wells

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS

DATE

Nature of claim(s) and any affirmative defenses:

- | | | |
|----|--|-------------------|
| a. | Was Rule 26(f)(1) Conference held? | <u>08/08/2006</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>08/28/2006</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>09/01/2006</u> |

2. DISCOVERY LIMITATIONS

NUMBER

- | | | |
|----|---|-----------|
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |

- | | | |
|----|--|-----------|
| c. | Maximum Number of Hours for Each Deposition (unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>30</u> |
| f. | Maximum requests for production by any Party to any Party | <u>25</u> |

DATE

3. AMENDMENT OF PLEADINGS/ADDING PARTIES²

- | | | |
|----|--|-------------------|
| a. | Last Day to File Motion to Amend Pleadings | <u>09/30/2006</u> |
| b. | Last Day to File Motion to Add Parties | <u>10/15/2006</u> |

4. RULE 26(a)(2) REPORTS FROM EXPERTS³

- | | | |
|----|-----------------|-------------------|
| a. | Plaintiff | <u>04/01/2007</u> |
| b. | Defendant | <u>05/01/2007</u> |
| c. | Counter reports | <u>05/31/2007</u> |

5. OTHER DEADLINES

- | | | |
|----|--|-------------------|
| a. | Discovery to be completed by: | |
| | Fact discovery | <u>03/01/2007</u> |
| | Expert discovery | <u>07/01/2007</u> |
| b. | (optional) Final date for supplementation of disclosures and discovery under Rule 26 (e) | |
| c. | Deadline for filing dispositive or potentially dispositive motions | <u>08/15/2007</u> |

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

- | | | |
|----|--|-------------------|
| a. | Referral to Court-Annexed Mediation | <u>No</u> |
| b. | Referral to Court-Annexed Arbitration | <u>No</u> |
| c. | Evaluate case for Settlement/ADR on | <u>03/01/2007</u> |
| d. | Settlement probability: Unknown at this time. | |

7. TRIAL AND PREPARATION FOR TRIAL: *Specify # of days for Bench or Jury trial as appropriate. Shaded areas will be completed by the court.*

a. Rule 26(a)(3) Pretrial Disclosures⁴

Plaintiff

11/21/07

Defendant

12/7/07

b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

DATE

c. Special Attorney Conference⁵ on or before

12/18/07

d. Settlement Conference⁶ on or before

e. Final Pretrial Conference

3:00 pm

1/2/08

f. Trial

Length

Time

Date

i. Bench Trial

N/A

ii. Jury Trial

5 days

8:00 am

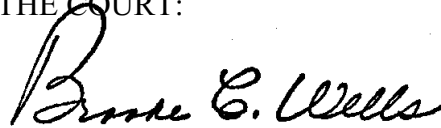
1/14/08

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this __14__ day of __September_____, 2006__.

BY THE COURT:



U.S. Magistrate Judge

FILED
U.S. DISTRICT COURT

2006 SEP 14 A 9:58

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

DEPUTY CLERK

United States of America

Plaintiff,

v.

VICTOR MANUEL SANCHEZ,

Defendant.

Case No. 1:06CR00081 PGC

ORDER TO UNSEAL CASE AND FILE A
REDACTED COPY OF THE
INDICTMENT

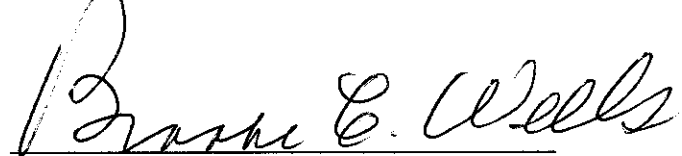
JUDGE: Paul G. Cassell

Having reviewed the government's Motion and Memorandum to Unseal the Case and file a Redacted copy of the Indictment in this action, seeing that there is no risk in regard to privacy in the release of the Redacted Copy of the Indictment, and good cause appearing;

IT IS ORDERED that the Plaintiff's Motion to Unseal the Redacted Copy of the Indictment is granted. The original Indictment is to remain **SEALED** and preserved in the records of the Court.

DATED this 14 day of September, 2006.

BY THE COURT:



PAUL G. CASSELL, Judge

United States District Court

MAJESTRATE JUDGE

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

TRUGREEN COMPANIES, L.L.C., a
Delaware limited liability company, et al.,

Plaintiffs,

vs.

MOWER BROTHERS, INC., a Utah
corporation, et al.

Defendants.

**ORDER GRANTING SECOND JOINT
MOTION FOR ENTRY OF
ORDER EXTENDING TIME FOR
RULE 26(a)(1) DISCLOSURES AND
EXCHANGE OF DISCOVERY**

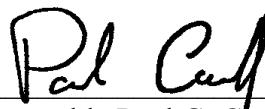
Case No. 1:06CV00024 PGC

The parties' Second Joint Motion and Stipulation for Entry of Order Extending Time for Rule 26(a)(1) Disclosures and Exchange of Discovery having come before the Court, and the Court having considered the parties' request to extend the September 8, 2006, deadline for the submission of Rule 26(a)(1) disclosures and the exchange of additional discovery to September 15, 2006, and good cause appearing,

IT IS ORDERED that the parties shall have to and including September 15, 2006, to submit their Rule 26(a)(1) disclosures and exchange additional discovery.

DATED this 14th day of September, 2006.

BY THE COURT:



Honorable Paul G. Cassell
United States District Judge

FILED
U.S. DISTRICT COURT

2006 SEP 14 A 9:54

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JENNIFER JONES, guardian of RYAN
JONES, and the class of similarly
situated individuals,

Plaintiffs,

v.

EMPLOYEE LEASING AND
MANAGEMENT, INC., a Utah
corporation, ELM EMPLOYEE HEALTH
PLAN, PHYSICIANS HEALTH NET
ADMINISTRATORS, LLC,
PHYSICIANS HEALTH NET, INC.,
a Utah corporation, and John Does,
I through X.

Defendants.

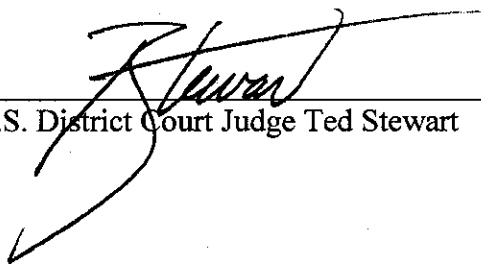
Civil No. 2:01 CV 777TS

**ORDER OF DISMISSAL
WITH PREJUDICE**

Judge Ted Stewart

Based on the withdrawal of the Plaintiff's Motion to Enforce Settlement Agreement, the Stipulation of the parties and good cause appearing, it is hereby ORDERED that the above captioned matter is dismissed with prejudice, each party to bear its own costs.

DATED this 12th day of September, 2006.


U.S. District Court Judge Ted Stewart

United States Probation Office
for the District of Utah

Request for Early Termination of Supervision

Name of Offender: **Nicole Chenard**

Docket Number: **2:02-CR-00065-001-DB**

Name of Sentencing Judicial Officer: **Honorable Dee V. Benson**
Chief United States District Judge

Date of Original Sentence: **August 15, 2002**

Original Offense: **Theft of Government Property**

Original Sentence: **60 Months Probation**

Type of Supervision: **Probation** Supervision Began: **August 15, 2002**

SUPERVISION SUMMARY

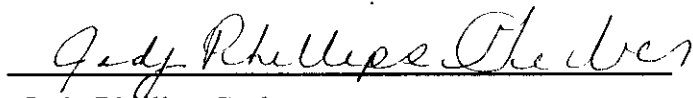
The probation office is recommending early termination of Ms. Chenard's supervision. Her scheduled termination date is August 14, 2007. The defendant has completed and abided by all conditions of supervision ordered by the Court. Ms. Chenard has been consistent in her payment history and has had no violations during the course of supervision. She was ordered to pay \$38,414 in restitution, of which the balance remaining is \$29,514. The Financial Litigation Unit of the United States Attorney's Office will enforce collection of the balance of restitution over the next 16 years and will ensure satisfaction of the Court's order beyond the term of supervision.

The probation office does not believe Ms. Chenard is in need of further supervision. If the Court concurs, a Probation Form 35 is attached for approval.

If the Court desires more information or another course of action, please contact me at (801) 535-4248.

Respectfully submitted,

by



Jody Phillips Gerber
U.S. Probation Officer
August 30, 2006

Attachment

UNITED STATES DISTRICT COURT

for the

DISTRICT OF UTAH

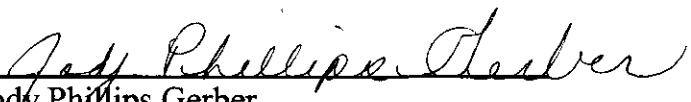
UNITED STATES OF AMERICA

v. Criminal No. 2:02-CR-00065-001-DB

CINTHIA NICOLE MILLAN CHENARD

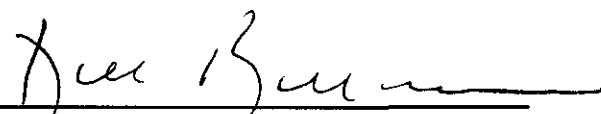
On August 15, 2002, the above-named individual's probation period of five years began. The defendant has complied with the rules and regulations of probation and has demonstrated that she is no longer in need of supervision. It is accordingly recommended that the defendant be discharged from supervision.

Respectfully submitted,


Jody Phillips Gerber
United States Probation Officer

Pursuant to the above report, it is ordered that the defendant be discharged from supervision and that the proceedings in the case be terminated.

Dated this 12th day of Sept., 2004.


Honorable Dee V. Benson
Chief United States District Judge

United States Probation Office
for the District of Utah

Request for Termination of Supervision

Name of Offender: **Simonte Manatau**

Docket Number: **2:02-cr-00317-001 PGC**

Name of Sentencing Judicial Officer: **Honorable Paul G. Cassell**

United States District Judge

Date of Original Sentence: **October 31, 2002**

Original Offense: **Felon in Possession of a Firearm**

Original Sentence: **51 months BOP**

Type of Supervision: **Supervised Release** Supervision Began: **July 19, 2006**

SUPERVISION SUMMARY

At this time, the probation office is requesting early termination of supervision. On August 14, 2006, the defendant passed away. A copy of the investigating agency face sheet is attached.

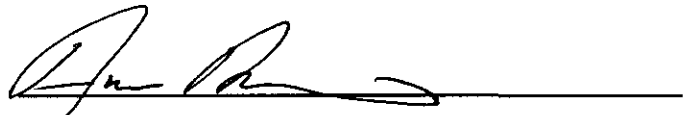
If the Court desires more information, please contact me at 535-4244.

I declare under penalty of perjury that the foregoing is true and correct

RECEIVED

AUG 23 2006

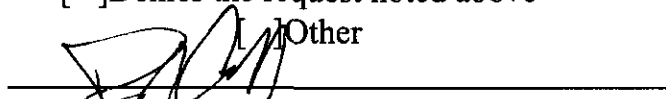
OFFICE OF
JUDGE PAUL G. CASSELL



Anrico Delray
United States Probation Officer
October 3, 2005

THE COURT:

- ☒ Approves the request noted above
☐ Denies the request noted above
☐ Other



Honorable Paul Cassell
United States District Judge

Date: 9/13/06

AUG-18-2006 11:25

SPEC INVEST

909 387 3455 P.02

SHERIFF'S DEPARTMENT
COUNTY OF SAN BERNARDINO, CA
(UNIFORM CRIME REPORT)☒ F PC 187
☐ M
☐ OTHER

MURDER

DR#110610817
H#88-06

03600

1. ASSIGNMENT MO-DAY-YEAR-TIME
08/14/06 / 2222 HRS5. ARRIVED MO-DAY-YEAR-TIME
08/14/06 / 2224 HRS8. DEAT
47. REPORT DIST.
RC0068. OCCURRED DAY OF WEEK MO-DAY-YEAR-TIME
MONDAY 08/14/06 / 2220 HRS9. REPORTED MO-DAY-YEAR-TIME
08/14/06 / 2221 HRS10. LOCATION OF OCCURRENCE CITY
HYSSOP DR / DORSET ST. RANCHO CUCAMONGA, CA

CODES FOR BOXES 12 & 22 ARE: V - VICTIM W - WITNESS RP - REPORTING PARTY DC - DISCOVERED CRIME IP - INVOLVED PARTY

V
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S11. LAST, FIRST MIDDLE (FIRM IF A BUSINESS)
MANATAU, SIMOTE MASIU12. V
V13. RESIDENCE-ADDRESS-STREET-CITY-ZIP
CONFIDENTIAL

14. RESIDENCE PHONE

15. OCCUPATION

16. RACE/SEX
OM17. AGE
2218. DOB M-D-YR
10/19/83

19. BUSINESS ADDRESS STREET-CITY-ZIP

20. BUSINESS PHONE

21. NAME: LAST, FIRST, MIDDLE (FIRM IF A BUSINESS)
SEKONA, TUUHETOKA22. V
V23. RESIDENCE ADDRESS-STREET-CITY-ZIP
CONFIDENTIAL

24. RESIDENCE PHONE

25. OCCUPATION

26. RACE/SEX
OM27. AGE
2328. DOB M-D-YR
09/22/82

29. BUSINESS ADDRESS-STREET-CITY-ZIP

30. BUSINESS PHONE

S
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S
P
E
C
T
S31. SUSPECT NO.1 LAST, FIRST, MIDDLE
SITANILEI, ATONI JUNIOR32. RACE/SEX
OM33. AGE
2034. HT
51035. WT
22536. HAIR
BLK37. EYES
BRN38. DOB
05/10/8639. ARRESTED
☐ YES ☒ NO40. INTERVIEW
☐ YES ☒ NO41. RESIDENCE-ADDRESS-STREET-CITY-ZIP
1317 N. HOLMES CT. ONTARIO, CA 91764

42. CLOTHING AND OTHER IDENTIFYING MARKS/CHARACTERISTICS

43. SUSPECT NO.2 LAST, FIRST, MIDDLE

44. RACE/SEX

45. AGE

46. HT

47. WT

48. HAIR

49. EYES

50. DOB

51. ARREST
☒ YES ☐ NO52. INTERVIEW
☒ YES ☐ NO

53. RESIDENCE ADDRESS-STREET-CITY-ZIP

54. CLOTHING AND OTHER IDENTIFYING MARKS/CHARACTERISTICS

I
N
V55. CHECK IF MORE NAMES IN CONTINUATION ☒ YES ☐ NO56. ADDITIONAL INFORMATION ☒ VICTIM ☒ WITNESS ☒ OFFICER ☐ OTHER57. PHYSICAL EVIDENCE RECOVERED ☒ YES ☐ NO58. PHOTOGRAPHS TAKEN ☒ YES ☐ NO59. LATENT PRINTS LIFTED ☐ YES ☒ NO60. VEHICLE
☐ V
☒ S61. COLOR
CHAMP62. YEAR
200563. MAKE
CHEV64. MODEL
SILV65. BODY TYPE
PU66. LIC.
7K3695667. STATE
CA

68. DAMAGE/ODDITY/ACCESSORIES

C
R
I
M
E

S
T
A
T
S69. ROBBERY WEAPON: ☐ FIREARM ☐ OTHER DANGEROUS WEAPON
☐ CUTTING INSTRUMENT ☐ STRONG ARMLOCATION: ☐ HIGHWAY ☐ OTHER BUSINESS ☐ SERV. STATION
☐ CONVENIENCE STORE ☐ RESIDENCE ☐ BANK ☐ MISC.70. ASSAULT WEAPON: ☒ FIREARM ☐ KNIFE / CUTTING INSTRUMENT ☐ OTHER DANGEROUS WEAPON☐ HANDS/FEET ☐ SIMPLE/NO INJURY71. BURGLARY ☐ NIGHT ☐ DAY
☐ UNKNOWN☐ FORCEFUL ENTRY
☐ ATTEMPT BY FORCE☐ ENTRY-NO FORCE☐ RESIDENCE ☐ VEHICLE☐ NON-RESIDENCE (BUILDING)72. LARCENY ☐ PICKPOCKET
☐ PURSE-SNATCH☐ SHOPLIFT☐ MOTOR VEHICLE PARTS☐ FROM BLDG: NOT SHOPLIFT OR MACHINES☐ FROM MOTOR VEHICLE☐ BICYCLES☐ FROM COIN-OPERATED MACHINES☐ ALL OTHERS73. PROPERTY
TYPES
&
VALUES

CURRENCY, NOTES

\$

JEWELRY

\$

CLOTHING

\$

OFFICE EQUIPMENT

\$

TV, STEREO, ETC.

\$

FIREARMS

\$

HOUSEHOLD GOODS

\$

CONSUMABLE GOODS

\$

LIVESTOCK

\$

OTHER MISC.

\$

TOTAL

\$

☐ IDENTIFIABLE PROPERTY TAKEN ☐ NOIC ENTRY COMPLETED74. DOMESTIC VIOLENCE INJURIES: ☒ NONF ☐ MINOR ☐ MAJORWEAPONS: ☐ YES ☐ NO75. PEACE OFFICER ASSAULTED/ARSON ☐ YES, IF YES, COMPLETE BOXES 1,2,3,4 AND 34 OR 35 ON CH-4 FORMS
Y
N
O
P
S
I
S

76. SYNOPSIS

On Monday, 08/14/06 at about 2030 hours a fight broke out between two Tongan Street Gangs on Hyssop Dr. in the City of Rancho Cucamonga. The gangs were identified as 4th Street Crips from Ontario and Tongan Crip Gang (TCG) from Rancho Cucamonga. About two hours later more 4th St. Crip Tongan males arrived at the location and were confronted by approximately 20 members of TCG. The group of 4th St. Crips was chased south on Hyssop and into their vehicle. TCG ran after the fleeing vehicle as it began to make a turn onto a dead end street. The 4th St. Crips had to place their vehicle in reverse, toward the mob of TCG and turn out of the dead end street. Manatau was almost within reach of the fleeing vehicle as Sitanilei reached out of an open window in the vehicle and began firing a handgun in the mob's direction. The vehicle then sped away and the 4th Street Crips left the neighborhood. During the volley of gunfire Manatau was struck in the right side of the abdomen striking his liver, heart and lungs killing him within minutes. Sekona was struck in the left calf with the bullet passing through his leg. He was taken to a local hospital where he was treated and released. Several eyewitness to the shooting came forward at a later date and identified Sitanilei as the shooter. All the witnesses placed Sitanilei in the backseat of the suspect vehicle when he began shooting toward the advancing crowd.

77. REPORTING OFFICER
DET. DONALD MAHONEY78. CMP #
M055479. DATE
08170680. REVIEWED BY
*[Signature]*DATE
8/16/0681. ROUTED TO
☐ SUBMIT TO D/A ☐ OTHER
☐ IMMEDIATE FOLLOW-UP82. REPORTING OFFICER
IS 115 QUALIFIED ☒ YES ☐ NO

TOTAL P.02

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

AARON RAISER,

Plaintiff,

v.

**UTAH COUNTY, ELDON PACKER, in
his individual capacity, OWEN
SHIVENDECKER, in his individual
capacity, SPANISH FORK CITY, and
STATE OF UTAH,**

Defendants.

**ORDER GRANTING MOTION TO
STAY BRIEFING ON PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Case No. 2:02cv1209

Judge Paul G. Cassell

Magistrate Paul M. Warner

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Paul G. Cassell pursuant to 28 U.S.C. § 636(b)(1)(B). Before the court is Defendant Spanish Fork City's (the "City") Motion to Stay Briefing on Plaintiff Aaron Raiser's ("Plaintiff") Motion for Summary Judgment [docket no. 108]. Specifically, the City moves the court to stay briefing until after it renders a decision on the City's motion to dismiss on the grounds that Plaintiff's summary judgment motion involves the same claims and arguments at issue in the City's motion to dismiss. The City further argues that if the court were to grant the City's motion to dismiss, there will be no need for briefing or a hearing on Plaintiff's motion for summary judgment. The court agrees and finds that a stay will serve the interests of convenience to the parties and judicial economy. Accordingly, the City's Motion to Stay Briefing [docket no. 110] is GRANTED.

Briefing on Plaintiff's Motion for Summary Judgment [docket no. 108] is STAYED pending an order on the City's Motion to Dismiss [docket no. 96].

DATED this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner".

PAUL M. WARNER
United States Magistrate Judge

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
PROBATION AND PRETRIAL SERVICES OFFICE**

Memorandum

2006 SEP 13 P 2:32

DATE: September 6, 2006
TO: Honorable Dee V. Benson
Chief United States District Court Judge
FROM: Coby Leavitt *AL*
United States Probation Officer
SUBJECT: ALBRECHT, Danny Heber
Docket No: 2:03-CR-00224-001-DB
Request to Travel Outside of United States

The defendant has submitted a travel request to leave the United States, traveling to Russia, from September 22, 2006 to October 6, 2006. At this time last year, the defendant sought and received permission from the Court for similar travel. The reason for the travel is to tour the Russian interior. The defendant will be traveling with a tour group.

During the course of the defendant's supervised release, he has performed satisfactorily. He has made monthly restitution payments towards Court-ordered restitution and fines, has maintained employment and a residence, and has been cooperative with the probation office.

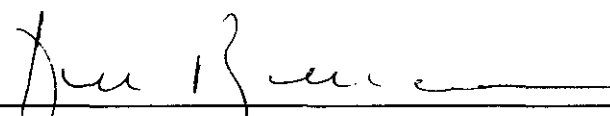
Based on the above, the probation office supports the defendant's request for out-of-country travel.

If the Court concurs with the defendant's request, please indicate in the signature block below.

If the Court has concerns, or wishes another course of action, please contact me at (435) 634-0660 ext. 25.

THE COURT:

- ☒ Approves the request noted above
☐ Denies the request noted above
☐ Other



Honorable Dee V. Benson
Chief United States Magistrate Judge

Date: 9-12-06

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

LANE LELAND LARSON
Defendant.

ORDER DENYING MOTION FOR
EXTENSION OF TIME TO FILE
§ 2255 MOTION.

Case No. 2:03-cr-00383

This matter is before the court on Lane Leland Larson's motion for an extension of time in which to file a motion pursuant to 28 U.S.C. § 2255. The court first heard from Mr. Larson regarding this issue via letter dated August 9, 2006. The court responded to this letter in much the same manner it responds to this motion.

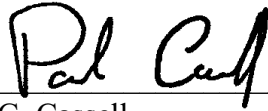
The court denies Mr. Larson's request for an extension of time to file a motion pursuant to 28 U.S.C. § 2255. Mr. Larson still has about thirty days in which to file such a motion — ample time. The court sees no need to grant a time extension at this point. If, after filing a § 2255 motion, Mr. Larson needs an extension of time in which to file a memorandum in support of his motion, the court will consider timely-filed requests with good cause shown.

Mr. Larson also requested transcripts and a copy of his plea agreement in this case.

However, the court does not generally provide transcripts unless there is a demonstrated need for them. But the clerk's office is directed to forward a copy of this order to Mr. David O. Leavitt, who is Mr. Larson's last counsel of record. The court DENIES Mr. Larson's motion for an extension of time in which to file a § 2255 motion [#46].

DATED this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge

David R. Olsen, Bar #2458
Ruth Lybbert, Bar #4904
Paul M. Simmons, Bar #4668
DEWSNUP, KING & OLSEN
2020 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
Telephone: (801) 533-0400

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

AMBER McCALLISTER, parent of
ZACHARY McCALLISTER, deceased;
CODY McCALLISTER; and ROGER G.
SEGAL, Trustee for the Bankruptcy Estates
of Cody Z. McCallister and Amber D.
McCallister,

Plaintiffs,

vs.

DOREL INDUSTRIES, INC.; DOREL
U.S.A., INC.; DOREL JUVENILE GROUP,
INC.; COSCO, INC.; and DOES I through X,

Defendants.

**ORDER FOR EXTENSION OF
TIME**

Case No. 03-CV-427 DAK

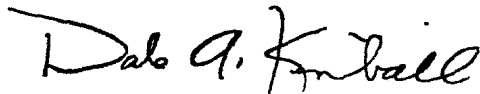
Judge: Dale A. Kimball

Based upon the Motion and Stipulation for Extension of Time and good cause appearing,

IT IS HEREBY ORDERED that the plaintiffs may have to and including Monday, September 18, 2006, to file and serve their memorandum in opposition to defendant Dorel Juvenile Group, Inc.'s Motion to Disqualify Dewsnup, King & Olsen.

DATED this 14th day of September, 2006.

BY THE COURT

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive, slightly stylized font.

DALE A. KIMBALL
UNITED STATES DISTRICT COURT JUDGE

Approved as to Form:

SNELL & WILMER L.L.P.

/s/ Kimberly Neville
Bryon J. Benevento
Kimberly Neville
Attorneys for Defendants

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED
U.S. DISTRICT COURT

2006 SEP 13 P 2:28

EXECUTIVE BOAT & YACHT
BROKERAGE, KORY TOONE, and
JOHN DOE PLAINTIFFS 1-100

)

Case No. 2:03CV000624 DS

)

Plaintiffs,

)

vs.

)

ORDER TO SHOW CAUSE

UNITED STATES NATIONAL PARK
SERVICES, KITTY L. ROBERTS, et al.,

)

)

Defendants.

)

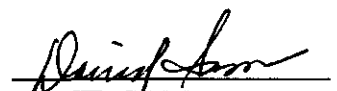
The record reflects that a status conference was set in this case for April 26, 2005. Since that time, there has been no activity on this case, nor have counsel filed an attorney planning meeting report with the court. The plaintiffs are hereby ordered within twenty (20) days from the date of this order to show cause in writing why this case should not be dismissed for failure to prosecute.

Failure to respond to the court's order within the time allowed will result in the case being dismissed without prejudice.

SO ORDERED.

DATED this 12th day of September 2006.

BY THE COURT:


DAVID SAM
SENIOR JUDGE
U.S. DISTRICT COURT

2006 SEP 14 P 2: 07

DISTRICT OF COLUMBIA

DEFEND CLERK

The court heard testimony and received physical evidence regarding the subject matter of the hearing. Being fully apprised in matter, the court makes the following findings and conclusions:

1. The court finds the testimony of defense counsel, Henri Sisneros, to be credible. To the contrary, the court does not find the testimony of Daniel Palermo to be credible.
2. The court finds that the petitioner, Daniel Palermo, never advised Mr. Sisneros to file an appeal.
3. No correspondence or other documentary evidence was presented to support Mr. Palermo's testimony that he contacted Mr. Sisneros regarding the filing of an appeal.
4. No telephone records or telephone logs were presented to support Mr. Palermo's testimony that he contacted Mr. Sisneros regarding the filing of an appeal.
5. Mr. Palermo called no witnesses from the Federal Defender's office to confirm that he had contacted the office regarding the filing of an appeal.
6. The court finds that other circumstances corroborate Mr. Sisneros' testimony that the petitioner was satisfied with his sentence and did not wish to appeal. Those circumstances include the following facts:
 - a). At the time of his sentencing hearing, petitioner asked the court to dismiss his pro se motion to withdraw his plea which motion was based on the same contention as the prospective appeal.
 - b). Petitioner received a 13 month downward departure which was contested by the government. Given a government cross-appeal, the defendant could have achieved a much worse sentencing disposition on appeal.


- c). Petitioner filed the instant motion for imposition of a new sentence eight months after the appellate filing deadline had lapsed.
7. Because petitioner did not advise Mr. Sisneros to pursue an appeal, the petitioner has not established that his counsel was deficient in failing to file an appeal.
8. Because individually packaged drugs, a set of scales, and \$1,600 cash were found together with the firearm, the facts strongly supported the imposition of the U.S.S.G. § 2K2.1(b)(5) enhancement. Therefore, the petitioner has not established any reasonable possibility that the result on appeal would have been different. Consequently, petitioner has not established any prejudice from the failure to file an appeal.
9. The petitioner has not overcome the strong presumption that Mr. Sisneros provided effective assistance of counsel.

ACCORDINGLY, IT IS HEREBY ORDERED that:

The petitioner's Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255 is hereby dismissed with prejudice.

DATED this 14th day of September, 2006

BY THE COURT:



DAVID SAM
United States District Judge

Mark J. Gregersen, #6553
3855 South 500 West, Suite M
South Salt Lake, UT 84115
801-747-2222
Attorney for Defendant Larson

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD A. LARSON,

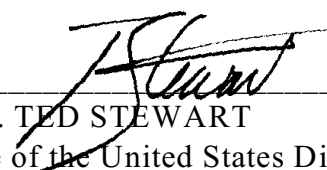
Defendant.

Case No. 2:04cr634 TS

ORDER GRANTING
DEFENDANT'S MOTION TO
EXTEND TIME FOR REPORTING
TO BUREAU OF PRISONS

Based on the motion of defendant Richard Larson, to which the government stipulates, and good cause appearing therefor; it is hereby ordered that there will be an extension of time, such that defendant shall self-surrender to the facility designated by the United States Bureau of Prisons, on Monday, October 16, 2006, at 2:00 p.m.

DATED this 14th day of September, 2006.



HON. TED STEWART
Judge of the United States District Court
District of Utah

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

| | |
|---|---|
| DANIEL T. HEILNER, Plaintiff, vs. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant. | MEMORANDUM DECISION & ORDER Case No: 2:04-CV-669 DN Magistrate Judge David Nuffer |
|---|---|

Plaintiff Daniel T. Heilner seeks judicial review of the Commissioner’s decision denying his claims for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) under Titles II and XVI of the Social Security Act.¹ This case was referred to the Magistrate Judge, with the consent of the parties, to conduct all proceedings pursuant to [28 U.S.C. § 636\(c\)](#).

Procedural History

Heilner filed applications for DIB and SSI in October 2001, alleging an inability to work since November 20, 1999² due to psychiatric problems.³ His applications were denied in initial and reconsidered determinations.⁴ Heilner then requested a hearing before the Administrative

¹[42 U.S.C. §§ 401-433](#), 1381-1383F.

²R. 63-65, 300-03.

³R. 104.

⁴R. 41-43, 47-50.

Law Judge (ALJ),⁵ and appeared at the scheduled hearing on December 17, 2002.⁶

Subsequently, on May 1, 2003, the ALJ issued a decision finding Heilner was not disabled because he could perform jobs existing in significant numbers in the national economy.⁷ Heilner filed a request for review of the ALJ's decision by the Appeals Council,⁸ which was denied on May 17, 2004.⁹ Thereafter, the ALJ's decision became the Commissioner's final decision under [42 U.S.C. § 405\(g\)](#).¹⁰

Summary of Heilner's Background and Medical Evidence in the Record

Heilner was born on March 25, 1976. He was twenty-three years old at the alleged onset date of November 20, 1999,¹¹ and twenty-seven years old at the time the ALJ's decision issued on May 1, 2003.¹² Heilner's psychiatric problems began to manifest early in his life. In early elementary school his teachers complained that he had an inability to focus and complete his work.¹³ He was expelled from each of the four different high schools he attended.¹⁴

⁵R. 39.

⁶R. 313-55.

⁷R. 15-27.

⁸R. 10-11, 304-12.

⁹R. 6-8.

¹⁰See [20 C.F.R. §§ 404.981](#), 416.1481.

¹¹R. 63.

¹²R. 27.

¹³R. 70.

¹⁴R. 71.

Consequently, he did not graduate from high school, but did get his GED.¹⁵ He has been unsuccessful in his attempts to complete any college or vocational education, having enrolled in at least six different schools.¹⁶ Heilner's attempts at long-term employment have also been unsuccessful.¹⁷ He has not been able to consistently work or attend school for more than five months at a time.¹⁸

As Heilner's psychological problems began to manifest and escalate in elementary school, teachers and school administrators encouraged his mother to have him tested.¹⁹ *In August 1987, Pim Brouwers, Ph.D. and Ida Sue Baron, Ph.D., evaluated Heilner, then eleven years old, to assess his strengths and weaknesses in intellectual, cognitive, and neuropsychological functioning.*²⁰ Testing revealed that attention and concentration were clear areas of difficulty for Heilner, especially in a classroom setting.²¹ Subsequently, Heilner was treated by William Louis Licamele, M.D. from January 1988 until 1990.²² Dr. Licamele diagnosed Heilner with Attention Deficit Hyperactivity Disorder (ADHD) and treated him with Ritalin and psychotherapy.²³ Dr.

¹⁵*Id.*

¹⁶R. 72.

¹⁷R. 70-72.

¹⁸R. 72.

¹⁹R. 70.

²⁰R. 126-32.

²¹R. 131-32.

²²R. 133, 248.

²³*Id.*

Licamele also noted that Heilner's trials off medication resulted in extreme attention and academic problems.²⁴ Dr. Licamele added that Heilner may have depression and bipolar illness due to positive family history for manic depressive disorder.²⁵

In November 1993, John Helfer, M.D., a staff psychiatrist at the Charter Provo Canyon School diagnosed Heilner with bipolar disorder and treated him with Eskalith to maintain his mental health.²⁶ In April 1994, Dr. Helfer stated he was sending a supply of medication for Heilner because he would be overseas for an extended period of time. Dr. Helfer recommended that Heilner continue taking his medication while he was abroad²⁷ attending college in Madrid, Spain.²⁸ However, Heilner was unable to keep up with his classwork, and dropped out of school.²⁹ At some point he became completely disoriented, and the police found him in the street in a delusional and incoherent state.³⁰ They transported Heilner to a psychiatric hospital in Madrid, where he remained in lockdown treatment for approximately three weeks before he was able to contact anyone in the United States about his situation.³¹ Eventually, Heilner's mother had to fly to Spain to escort him home.³²

²⁴R. 248.

²⁵*Id.*

²⁶R. 134.

²⁷*Id.*

²⁸R. 70.

²⁹*Id.*

³⁰*Id.*

³¹R. 70-71.

³²R. 71.

Upon his return from Spain in July 1995, Heilner was immediately hospitalized at University Neuropsychiatric Institute (UNI) in Salt Lake City and began treatment with psychiatrist Lowry A. Bushnell, M.D.³³ Dr. Bushnell continued to treat Heilner for bipolar affective disorder through, at least, January 2004.³⁴

Medical records indicate that from 1996 through 2002, Heilner was admitted to the hospital and/or emergency room on several occasions. In January 1996, Heilner was brought into the LDS Hospital emergency room, handcuffed to the gurney, by Emergency Medical Services (EMS) and the Salt Lake City police.³⁵ He was screaming, combative and disoriented.³⁶ After a toxicology screen was positive for benzodiazepines and amphetamines, Heilner was admitted into the hospital for post drug intoxication, altered mental status, and a psychiatric consult.³⁷ After a three-day hospital stay, Heilner was discharged in the care of his mother, to be transported directly to UNI for inpatient admission.³⁸ Records from UNI for this stay are not included in the record, but the admission and stay at UNI is confirmed by Dr. Bushnell's treatment notes.³⁹ Dr. Bushnell also records another inpatient hospitalization for Heilner at UNI

³³*Id.*; R. 307.

³⁴R. 144-71. 252-66, 290-93, 295-300, 307.

³⁵R. 137; 140.

³⁶R. 140.

³⁷R.135-41.

³⁸R.136.

³⁹R. 168.

in February 1996.⁴⁰ Dr. Bushnell saw Heilner again in March and then in April when Heilner was hospitalized.⁴¹ Heilner was told to return within a month.⁴²

In December 1998, Heilner was admitted to the hospital because of delusional, psychotic, and intermittent suicidal ideation.⁴³ A toxicology screen was negative.⁴⁴ Heilner reported that he needed to fine tune his medications.⁴⁵ After a three-day hospitalization, Heilner was diagnosed as having a hypomanic episode of bi-polar affective disorder and was restarted on a series of psychotic medications.⁴⁶ The discharge order also indicates that Heilner was to be discharged to another facility,⁴⁷ but records confirming that are not included with the record.

In March 2000, Heilner presented to an emergency room with complaints of nausea, vomiting, diarrhea, and dehydration after drinking wine.⁴⁸ His blood alcohol level was 0.01% and a toxicology screen was negative for cocaine, opiates, THC, amphetamines, benzodiazepines, barbiturates, and Methadone.⁴⁹ Charles M. Ayers, M.D., suspected that

⁴⁰*Id.*

⁴¹R. 167.

⁴²*Id.* The ALJ misread this note and found that Bushnell urged Heilner “to refrain from using 'meth.’” R. 17.

⁴³R. 173.

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶R. 172.

⁴⁷*Id.*

⁴⁸R. 179, 181.

⁴⁹R. 182.

Heilner's symptoms were caused by mixing bipolar medications with alcohol.⁵⁰ After conferring with his treating psychiatrist, Dr. Ayers discharged Heilner to his mother's care later that day.

In April 2000, Heilner went to an emergency room complaining of mild nausea, shaking, and anxiety after eating a "brownie laced with some sort of drug."⁵¹ On examination, he demonstrated no psychotic or suicidal symptoms but his reasoning was limited.⁵² His Depakote level was low.⁵³ Heilner was discharged, but told to follow up with his primary physician, Dr. Bushnell, for adjustment to the low level in his medication.⁵⁴

In May 2000, Heilner presented to an emergency room for bizarre behavior after returning from a weekend trip from California.⁵⁵ He was diagnosed with drug induced psychosis,⁵⁶ and was discharged later that day.

In December 2000, Heilner went to an emergency room because of nausea, abdominal pain, and vomiting.⁵⁷ Heilner indicated that although he normally does not drink, he had some alcohol to drink the previous night.⁵⁸ The attending physician suspected that Heilner's

⁵⁰*Id.*

⁵¹R. 193.

⁵²*Id.*

⁵³R. 194.

⁵⁴*Id.*

⁵⁵R.185-86.

⁵⁶R. 187.

⁵⁷R. 190.

⁵⁸*Id.*

symptoms were related to food intake.⁵⁹ Later that day, Heilner was discharged in stable and improved condition.⁶⁰

On January 12, 2001, Plaintiff presented to an emergency room for complaints of nausea and vomiting after drinking alcohol the night before.⁶¹ He was hydrated and discharged. Two weeks later, on January 28, 2001, Heilner went to the emergency room due to acute vomiting after drinking the previous night.⁶² Once again, he was hydrated, counseled not to drink in excess and released.⁶³

In February 2001, Heilner presented to an emergency room for complaints of nausea, abdominal cramping, and vomiting after eating some “bad crab cakes” the previous afternoon.⁶⁴ After an examination, Heilner refused intravenous treatment, reported he was feeling better and was discharged to return home.⁶⁵

On March 16, 2001, Heilner went to an emergency room complaining of severe abdominal pain and vomiting after eating a “potato pasta dish.”⁶⁶ After being hydrated with intravenous fluids, he was discharged in stable condition.⁶⁷

⁵⁹R. 191.

⁶⁰*Id.*

⁶¹R. 238-39.

⁶²R. 236-37.

⁶³R. 237.

⁶⁴R. 201.

⁶⁵*Id.*

⁶⁶R. 195.

⁶⁷R. 196.

On March 21, 2001, paramedics brought Heilner to the emergency room in an unresponsive state.⁶⁸ His toxicology screen was negative.⁶⁹ Heilner was diagnosed with decreased level of consciousness, status epilepticus, respiratory failure, and aspiration pneumonia.⁷⁰ A doctor from the neurology service was called in for an assessment. He determined that Heilner needed to be admitted for acute neurocritical care hospitalization.⁷¹ After being stabilized and completing a series of radiology tests, Heilner was discharged.⁷²

On May 8, 2001, Heilner went to an emergency room complaining of nausea, vomiting, and a mild headache.⁷³ He reported that he had been drinking beer the night before.⁷⁴ The attending physician diagnosed him with alcoholic gastritis and treated him with intravenous medication.⁷⁵ He was discharged a few hours later.⁷⁶

In late May or early June, 2001,⁷⁷ Heilner reported to an emergency room complaining he was having a “psychotic break.”⁷⁸ He complained of hearing and seeing things, nightmares, and

⁶⁸R. 214-33.

⁶⁹R. 215.

⁷⁰R. 215.

⁷¹*Id.*

⁷²R. 224-33.

⁷³R. 208-13.

⁷⁴*Id.*

⁷⁵R. 209

⁷⁶R. 213.

⁷⁷R. 234-35. The ER Report is dated 05/29/01 and 06/03/01.

⁷⁸*Id.*

excessive religiosity and guilt.⁷⁹ The doctor noted that, in addition to his regular antipsychotic medications (Depakote, Navane, and Tegretol), Heilner was using a new antipsychotic drug called Giodon, that “apparently was not working.”⁸⁰ After completing an evaluation with a psychiatric social worker, Heilner began to calm down.⁸¹ He was discharged after the crisis worker arranged for him to see his private therapist the next day.⁸²

In March 2002, Heilner was admitted to an emergency room complaining of nausea and vomiting after drinking some champagne and eating guacamole.⁸³ He was treated with intravenous fluids and Benadryl and discharged an hour later.⁸⁴

In addition to these records for hospitalizations, the record contains treatment notes from Dr. Bushnell, Heilner’s treating psychiatrist of nine years.⁸⁵ Before the hearing, Dr. Bushnell completed a mental assessment on Heilner describing his condition as very “brittle,”⁸⁶ stating that he continually “decompensates to manic or depression under the stress of work or significant social interactions.”⁸⁷ Dr. Bushnell’s assessment found that Heilner was disabled because he met

⁷⁹*Id.*

⁸⁰R. 234.

⁸¹R. 235.

⁸²*Id.*

⁸³R. 250-51.

⁸⁴R. 251.

⁸⁵Treatment notes contained in the record are for periods 10/4/95-12/17/98, exhibit 6F, R. 144-71; 12/23/99- 10/3/01, exhibit 17F, R. 253 - 66; 1/10/02 - 12/9/02, exhibit 20F, R. 291-93; 6/19/02, exhibit 19F, R. 290.

⁸⁶R. 296.

⁸⁷R. 300.

the Listing of Impairments, [20 C.F.R. pt. 404](#), subpt. P., app.1.⁸⁸ In a post hearing letter dated January 9, 2004, Dr. Bushnell again described Heilner's mental condition and explained that, although compliant with medications, the treatment record demonstrates that Heilner still "cycles into mania with episodes of psychosis."⁸⁹ Dr. Bushnell went on to explain that although Heilner has abused drugs and alcohol in the past, his bipolar disease was always clearly primary and there was "no evidence the substances cause his mania."⁹⁰

On January 11, 2002, Merritt H. Egan, M.D., a nonexamining State agency physician, reviewed the file evidence and concluded that Heilner could not perform activities within a schedule, maintain a regular attendance or be punctual within customary tolerances.⁹¹ Further, Dr. Egan stated that Heilner could not complete a normal workweek without interruptions from psychological symptoms and that he could not set realistic goals or make plans independent of others.⁹² At that time, Dr. Egan also opined that drug and alcohol addiction were material to his disability.⁹³ On April 24, 2002, John Gill, Ph.D., a nonexamining State agency physician, affirmed Dr. Egan's findings.⁹⁴

At the administrative hearing, Thomas Edward Atkin, Psy.D., testified as a medical

⁸⁸Exhibit 21F, R. 295-300.

⁸⁹[Exhibit AC-2](#), R. 307

⁹⁰*Id.*

⁹¹R. 286.

⁹²*Id.*

⁹³*Id.*

⁹⁴R. 287.

expert.⁹⁵ Dr. Atkin opined that Heilner's alcohol and substance abuse was a contributing material factor to disability from the alleged onset of disability of November 1999 through January 1, 2001, but that alcohol and substance abuse was not a contributing material factor to disability after January 2001.⁹⁶ Dr. Atkin opined that since 2001, Plaintiff had mild restriction of activities of daily living, moderate difficulties in maintaining social functioning, moderate difficulties in maintaining concentration, persistence or pace, and one or two episodes of decompensation, each of extended duration.⁹⁷ Dr. Atkin thought that Heilner was capable of handling low stress work with minimal contact with the public and limited contact with co-workers.⁹⁸

The ALJ's Decision

The ALJ found that from the alleged onset date, Heilner suffered from medically determinable severe impairments including "bipolar disorder, history of polysubstance abuse and alcohol abuse in remission."⁹⁹ However, the ALJ determined that through May 2001, substance abuse was a contributing factor material to his disability, i.e., he was not disabled absent the effects of his substance abuse.¹⁰⁰ In making this determination, the ALJ discounted the opinion

⁹⁵R. 339-48.

⁹⁶R. 340-41.

⁹⁷R. 341.

⁹⁸R.344.

⁹⁹R. 25.

¹⁰⁰R. 26.

of Heilner's long-time treating physician, Dr. Bushnell.¹⁰¹ The ALJ felt that Dr. Bushnell's opinion was inconsistent with his treatment notes and that it did not adequately consider alcohol and drug abuse.¹⁰²

The ALJ concluded that Heilner retained the residual functional capacity to perform low stress work, repetitive work activities with minimal contact with workers and the general public.¹⁰³ Although he could not perform his past relevant work, the ALJ concluded that Heilner could perform other work existing in significant numbers in the national economy, and therefore, he was not disabled .¹⁰⁴

Analysis

The ALJ must evaluate all medical opinions in the record. However, the weight given each opinion will vary according to the relationship between the claimant and the medical professional.¹⁰⁵ "The opinion of an examining physician is generally entitled to less weight than that of a treating physician, and the opinion of an agency physician who has never seen the claimant is entitled to the least weight of all."¹⁰⁶

The ALJ is required to give controlling weight to the opinion of the treating physician so long as it is well-supported by medically acceptable clinical and laboratory diagnostic

¹⁰¹*Id.*

¹⁰²*Id.*

¹⁰³*Id.*

¹⁰⁴R. 26-27.

¹⁰⁵[*Hamlin v. Barnhart*, 365 F.3d 1208, 1215 \(10th Cir. 2004\).](#)

¹⁰⁶[*Robinson v. Barnhart*, 366 F.3d 1078, 1084 \(10th Cir. 2004\); 20 C.F.R. § 404.1527\(d\)\(1\).](#)

techniques, and is not inconsistent with other substantial evidence in the record.¹⁰⁷ “An ALJ may disregard a treating physician's opinion, however, if it is not so supported.”¹⁰⁸ In all cases, the regulations require that the ALJ “give good reasons” in his decision for the weight that he gave to the treating physician’s opinion.¹⁰⁹

Heilner contends that the ALJ failed to give Dr. Bushnell’s opinion the controlling weight to which it was entitled.

The treating physician's opinion is given particular weight because of his “unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.” [20 C.F.R. § 416.927\(d\)\(2\)](#). This requires a relationship of both duration and frequency. “The treating physician doctrine is based on the assumption that a medical professional *who has dealt with a claimant and his maladies over a long period of time* will have a deeper insight into the medical condition of the claimant than will a person who has examined a claimant but once, or who has only seen the claimant's medical records.” [Barker v. Shalala, 40 F.3d 789, 794 \(6th Cir.1994\)](#) (emphasis added). . . . Moreover, a longstanding treatment relationship provides some assurance that the opinion has been formed for purposes of treatment and not simply to facilitate the obtaining of benefits.¹¹⁰

In this case, the ALJ refused to give controlling weight to the opinion of the treating physician, Dr. Bushnell, “because it did not consider the claimant’s alcohol and drug abuse, it is out of proportion with the objective medical record, is inconsistent with Dr. Bushnell’s treatment

¹⁰⁷[Hamlin, 365 F.3d at 1215 \(10th Cir. 2004\)](#); [Doyal v. Barnhart, 331 F.3d 758, 762 \(10th Cir. 2003\)](#).

¹⁰⁸[Doyal, 331 F.3d at 762](#); [Castellano v. Sec’y of Health & Human Servs., 26 F.3d 1027, 1029 \(10th Cir.1994\)](#).

¹⁰⁹[Doyal, 331 F.3d at 762](#); [Hamlin, 365 F.3d at 1215](#); [Drapeau v. Massanari, 255 F. 3d 1211, 1213 \(10th Cir. 2001\)](#) (requiring the ALJ to supply “specific, legitimate reasons” for rejecting the opinion of the treating physician).

¹¹⁰[Doyal, 331 F.3d at 762-63](#).

notes, and is on issues ultimately reserved to the Commissioner.”¹¹¹ Yet this finding is not supported by the record evidence or the ALJ’s own “Evaluation of the Evidence” contained in his opinion.¹¹²

First, Dr. Bushnell’s treatment notes contain several references to Heilner’s drug and alcohol abuse.¹¹³ Additionally, the Mental Status Report that Dr. Bushnell completed on April 30, 1996, documents a history of drug and alcohol abuse.¹¹⁴ By the time Dr. Bushnell completed The Mental Impairment Questionnaire (RFC & Listings) on December 16, 2002, the record is clear that Heilner’s abuse was in remission for well over a year.¹¹⁵ Dr. Bushnell’s treatment notes and documentation fully considered Heilner’s drug and alcohol abuse, and **found it to be a symptom of his mental illness, not the cause.**¹¹⁶ This important finding was ignored by the ALJ.

Next, Dr. Bushnell’s opinion is not out of proportion with the medical record. Consistent with Dr. Bushnell’s opinion, the nonexamining State agency physicians also concluded that Heilner could not perform activities within a schedule, maintain a regular attendance or be punctual within customary tolerances, could not complete a normal workweek without interruptions from psychological symptoms and that he could not set realistic goals or make

¹¹¹R. 26.

¹¹²See R. 16-25.

¹¹³See R. 160-66; 168; 258; 262-64.

¹¹⁴R. 160-66.

¹¹⁵See R. 340-41 (Dr. Atkins’s testimony stating abuse in remission since January 2001); R. 26 (ALJ’s finding that abuse in remissions since May 2001).

¹¹⁶R. 307-08.

plans independent of others..¹¹⁷

The ALJ also concluded that Dr. Bushnell's opinion was inconsistent with his treatment notes. However, Dr. Bushnell's treatment notes contained in the record, clearly show the repeated, ongoing cyclical phases of Heilner's mental illness, ranging from manic to euthymic. Moreover, the inconsistency might be explained by gaps in the treatment notes that are not contained in the record.¹¹⁸ Further, if the ALJ believed that Dr. Bushnell's reported opinion and treatment notes were in conflict, he had the obligation under the regulations¹¹⁹ to obtain additional information from Dr. Bushnell before rejecting the report.¹²⁰

Finally, it does not appear that the ALJ considered several other specific factors¹²¹ in disregarding the treating physician's opinion, including: (1) the length of the treatment relationship and the frequency of examination; (2) the nature and extent of the treatment relationship; and (3) whether or not the physician is a specialist in the area upon which an opinion is rendered.¹²² In this case, Dr. Bushnell was Heilner's treating physician since 1995, treating him daily during hospitalizations, seeing him on emergency basis when necessary, and

¹¹⁷R. 286.

¹¹⁸*See supra* note 83.

¹¹⁹*See* [20 C.F.R. § 404.1512\(e\)\(1\)](#) stating:

We will seek additional evidence or clarification from your medical source when the report from your medical source contains a conflict or ambiguity that must be resolved, the report does not contain all the necessary information, or does not appear to be based on medically acceptable clinical and laboratory diagnostic techniques.

¹²⁰[McGoffin v. Barnhart](#), 288 F.3d 1248, 1252 (10th Cir. 2002).

¹²¹*See* [Drapeau v. Massanari](#), 255 F.3d 1211, 1213 (10th Cir. 2001) (quoting *Goatcher v. United States Dep't of Health & Human Servs.*, 52 F.3d 288, 290 10th Cir. 1995) (providing a list of specific factors ALJ must consider).

¹²²*See id.*

meeting with him on a regular basis throughout the treatment period. The nature of the treatment was very personal, as Dr. Bushnell was providing psychiatric treatment for a mental illness on an ongoing basis. Lastly, as a psychiatrist, Dr. Bushnell is a specialist in the area in which he rendered an opinion.

In light of all these reasons discussed, the ALJ should not have dismissed the opinion of the long-term treating physician to rely completely on the opinion of the medical expert Dr. Atkin, a nonexamining, nontreating clinical psychologist. The Tenth Circuit has continually cautioned against such reliance by stating that the “findings of a nontreating physician based upon limited contact and examination are of suspect reliability.”¹²³

Conclusion

Because the ALJ failed to follow the applicable legal standards when evaluating the opinion of the treating physician, his conclusions regarding the treating physician’s opinion were not supported by substantial evidence. Accordingly, the case is reversed and remanded to the ALJ for further proceedings.

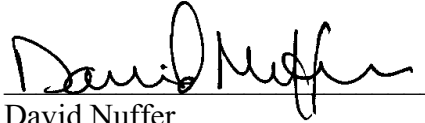
ORDER

IT IS HEREBY ORDERED that the case is REVERSED and REMANDED for proper consideration of the treating physician’s report and opinion.

¹²³See [McGoffin, 288 F.3d at 1253](#) (quoting *Frey v. Bowen*, 816 F.2d 508, 515); [Drapeau, 255 F.3d at 1214](#) (same).

DATED this 13th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Nuffer", written over a horizontal line.

David Nuffer
U.S. Magistrate Judge

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

FILED
U.S. DISTRICT COURT

CENTRAL DIVISION

2006 SEP 14 P 2:07

BASGER DAYLIGHTING CORP.,

) Case No. 2:04CV01074 DS

Plaintiff and
Counterclaim Defendant,

)

vs.

)

O R D E R

SCOTT V. MERKLEY ET AL.,

)

Defendant.

)

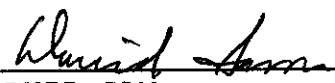
Defendants and

Counterclaim Plaintiffs.)

Based on the Stipulation of Dismissal with Prejudice pursuant
to Fed. R. Civ. P. 41(A)(1)(ii) filed by the parties, **IT IS HEREBY
ORDERED** that the above entitled matter is **DISMISSED** with prejudice.

DATED this 14 day of September, 2006.

BY THE COURT:



DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN THOMAS PAVELCHAK,

Defendant.

Case #: 2:05CR00096-TS

PRELIMINARY ORDER OF
FORFEITURE

JUDGE: TED STEWART

IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count 2 of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924(d)(1), the defendant John Thomas Pavelchak, shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 18 U.S.C. § 922, including but not limited to:

- 9mm Taurus Handgun, Serial Number: TNC52522

2. The Court has determined that based on a guilty plea of unlawful user of controlled substances in possession of a firearm, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

3. Upon entry of this Order the Attorney General, or its designee is authorized to seize and conduct any discovery proper in identifying, locating, or disposing of the property subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. Upon entry of this Order the Attorney General or its designee is authorized to

commence any applicable proceeding to comply with statutes governing third party interests, including giving notice of this Order.

5. The United States shall publish notice of this Order on its intent to dispose of the property in such a manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject property.

6. Any person, other than the above named defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and amendment of the order of forfeiture pursuant to 21 U.S.C. § 853.

7. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall become final as to the defendant at the time of sentencing and shall be made part of the sentence and included in the judgment.

8. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.


9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

10. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

12. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 14th day of September, 2006.

BY THE COURT:



TED STEWART, Judge
United States District Court

RONALD J. YENGICH #3580
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 355-0320
Fax: (801) 364-6026
Email: ronaldy333@aol.com

**IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIGUEL ANGEL SALINAS,

Defendant.

**ORDER TO ALLOW SUBSTITUTION
OF COUNSEL**

Case No. 2:06-CR-00364

Honorable Dale A. Kimball

Based upon motion of counsel and good cause appearing, now therefore;

IT IS HEREBY ORDERED that Ronald J. Yengich be allowed to substitute as counsel for the Defendant, Miguel Angel Salinas, replacing Jose A. Loayza and Kenneth L. Combs, who have previously entered an appearance of counsel.

SIGNED BY MY HAND this 14th day of September, 2006.



DALE A. KIMBALL
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

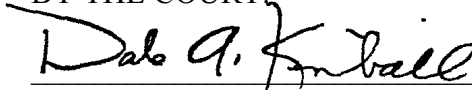
| | | |
|---------------------------|---|-----------------------------------|
| UNITED STATES OF AMERICA, | : | |
| | : | |
| Plaintiff, | : | ORDER EXCLUDING TIME UNDER |
| | : | SPEEDY TRIAL ACT |
| v. | : | |
| | : | Case No. 2:05CR00597 DAK |
| PHILLIP BINDER, | : | |
| | : | Hon. Dale A. Kimball |
| Defendant. | : | |

A status conference was held in this matter on September 12, 2006. Counsel for the defendant, Santo Volpe, appeared by telephone; the United States was represented by Veda Travis. Mr. Volpe indicated that he intended to file a motion to suppress in this matter and was given a cut-off date of September 22, 2006. Based on that representation, no trial date was set. Based on the foregoing, and for good cause appearing,

IT IS HEREBY ORDERED that the time between September 12, 2006, and the filing of defendant's motion to suppress evidence is excluded under 18 U.S.C. § 3161(h)(8)(A) and (B)(iv) of the Speedy Trial Act because the ends of justice in excluding the time outweigh the best interest of the public and the defendant in a speedy trial. This is based on the Court's finding that failure to grant the continuance and exclusion would deny the defendant continuity of counsel.

DATED this 14th day of September, 2006.

BY THE COURT:



DALE A. KIMBALL

U.S. District Court Judge

SEP 14 2006

UNITED STATES DISTRICT COURT BY MARKUS B. ZIMMER, CLERK

DEPUTY CLERK

Central

District of

Utah

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

Troy Dewain Balmforth

Case Number: 2:05-cr-000823-001

USM Number: 13193-081

Gary Weight

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1s of the Superseding Felony Information

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|--------------------|---|---------------|-------|
| 21 USC § 841(a)(1) | Manufacture or Attempt to Manufacture 5 Grams or More of Actual Methamphetamine. | | 1s |

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/12/2006

Date of Imposition of Judgment

Dale A. Kimball
Signature of Judge

Dale A. Kimball

Name of Judge

Federal District Judge

Title of Judge

September 13, 2006
Date

DEFENDANT: Troy Dewain Balmforth
CASE NUMBER: 2:05-cr-000823-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

37 months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant be placed in a Federal Corrections Facility in the State of Colorado to facilitate family visitation.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 10/16/2006

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Troy Dewain Balmforth
CASE NUMBER: 2:05-cr-000823-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

48 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Troy Dewain Balmforth

CASE NUMBER: 2:05-cr-000823-001

SPECIAL CONDITIONS OF SUPERVISION

- 1) The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment.
- 2) The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
- 3) The defendant shall pay on any amount established by the Office of Recovery Services for child support arrearages. The defendant shall keep current on these payments and attach a copy of said payment to his monthly supervision report.

DEFENDANT: Troy Dewain Balmforth
CASE NUMBER: 2:05-cr-000823-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| | | | |
|--------|-------------------|-------------|--------------------|
| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
| TOTALS | \$ 100.00 | \$ 0.00 | \$ 4,587.75 |

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss*</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------------|--------------------|----------------------------|-------------------------------|
| Drug Enforcement Agency | \$4,587.75 | \$4,587.75 | |
| 348 East South Temple | | | |
| Salt Lake City, Utah 84111 | | | |
| Case No. ML-06-0001 | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

| | | |
|--------|--------------------|--------------------|
| TOTALS | \$ <u>4,587.75</u> | \$ <u>4,587.75</u> |
|--------|--------------------|--------------------|

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Troy Dewain Balmforth
CASE NUMBER: 2:05-cr-000823-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 4,687.75 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Special Assessment Fee of \$100 due immediately. Restitution of \$4,587.75 is payable at a minimum rate of \$50 per month upon release from incarceration, with no interest to accrue.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages _____ - _____
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

YVONNE STEENBERG-HATCHER,

Plaintiff,

vs.

CITY MARKET, INC., a Colorado
corporation, GARY VOESTE, and KRIS
WINDSOR,

Defendants.

ORDER GRANTING MOTION TO
DISMISS WITH PREJUDICE

Case No. 2:05-cv-00287

The court, having reviewed the Joint Motion to Dismiss with Prejudice, GRANTS the motion [#20]. This matter is dismissed with prejudice. Each side shall pay its own attorneys' fees and costs. The clerk's office is directed to close this case.

DATED this 14th day of September, 2006.

BY THE COURT:



Paul G. Cassell
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

TRAVIS HUEBNER,

Plaintiff,

vs.

BARBARA McCLEARY, ALAN
SEVINSON, RICHARD J. ANDERSON,
ELIANA DOWNING, KIERSTEN
BUSHMAN, MATTHEW FROLICK,
F. RICHARD SMITH III, and JOHN DOES
1-50.

Defendants.

**ORDER GRANTING
STIPULATED MOTION TO DISMISS
CASE WITH PREJUDICE**

Case No. 2:05CV309 PGC

Based upon review of the Stipulated Motion to Dismiss Case with Prejudice for and good cause appearing, the court GRANTS the stipulated motion filed by Plaintiff Travis Huebner and Defendants Richard Anderson, Kiersten Bushman, Carol Covert, Eliana Downing, and Matthew Frolick [#75]. The Amended Complaint is dismissed in its entirety and with prejudice. Further, all claims against the defendants are dismissed with prejudice. The parties will each bear their own costs and attorney fees incurred in this case. The clerk's office is directed to close this case.

DATED this 14th day of September, 2006.

BY THE COURT:



PAUL G. CASSELL
United States District Judge

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FILED
U.S. DISTRICT COURT

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

2006 SEP 13 P 2:27

DAVID J. HOLDSWORTH (4052)

Attorney for Plaintiff

9125 South Monroe Plaza Way, Suite C

Sandy, UT 84070

Telephone (801) 352-7701

Facsimile (801) 567-9960

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

JANINE BAKER,

Plaintiff,

v.

OVERSTOCK.COM, INC.,

Defendant.

: **ORDER GRANTING**
: **EXTENSION OF TIME FOR**
: **PLAINTIFF TO FILE**
: **MEMORANDUM IN OPPOSITION**
: **TO DEFENDANT'S MOTION FOR**
: **SUMMARY JUDGMENT**

: Civil No.: 2:05CV00561BSJ

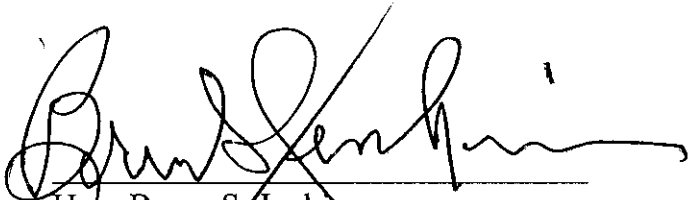
: Honorable Bruce S. Jenkins

Based on the Unopposed Motion to Extend Time for Plaintiff to file her Memorandum in Opposition to Defendant's Motion for Summary Judgment and good cause appearing therefor, Plaintiff Janine Baker, may have until September 11, 2006 to file her Memorandum in Opposition.

SO ORDERED.

DATED this 11 day of September, 2006.

BY THE COURT:



Hon. Bruce S. Jenkins
Senior U.S. District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of September, 2006, a true, correct and complete copy of the foregoing ORDER GRANTING EXTENSION OF TIME FOR PLAINTIFF TO FILE MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT was delivered upon the attorney(s) indicated below by the following method(s):

| | |
|-------------------------------------|--------------------|
| <input type="checkbox"/> | Facsimile |
| <input checked="" type="checkbox"/> | U.S. Mail |
| <input type="checkbox"/> | Hand Delivery |
| <input type="checkbox"/> | Overnight Delivery |
| <input type="checkbox"/> | E-Mail |

Michael Patrick O'Brien, Esq.
Ali Levin, Esq.
Jones Waldo Holbrook & McDonough
170 South Main, Suite 1500
P.O. Box 45444
Salt Lake City, UT 84145-0444

/s/ David J. Holdsworth
David J. Holdsworth
Attorney for Plaintiff

DAVID J. HOLDSWORTH (4052)
Attorney for Plaintiff
9125 South Monroe Plaza Way, Suite C
Sandy, UT 84070
Telephone (801) 352-7701
Facsimile (801) 567-9960

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FILED
U.S. DISTRICT COURT

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2006 SEP 13 PM 2:27

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

JANINE BAKER,

Plaintiff,

v.

OVERSTOCK.COM, INC.,

Defendant.

:
: **ORDER GRANTING PLAINTIFF'S**
: **APPLICATION FOR LEAVE TO**
: **FILE AN OVER-LENGTH**
: **MEMORANDUM IN OPPOSITION**

:
:
: Civil No.: 2:05CV00561BSJ

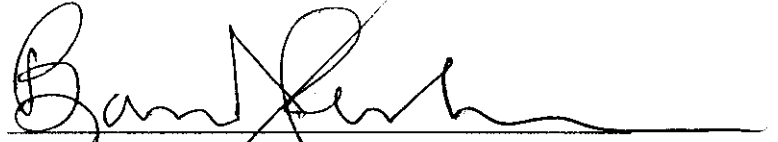
:
: Honorable Bruce S. Jenkins

The Court, having reviewed the Plaintiff's Application for Leave to File
an Over-Length Memorandum in Opposition and good cause appearing therefor,

IT IS HEREBY ORDERED that Plaintiff Janine Baker's Memorandum in
Opposition to Defendant's Motion for Summary Judgment, consisting of 28 pages of
argument is deemed appropriately filed.

DATED this 13 day of September, 2006.

U.S. DISTRICT COURT

A handwritten signature in black ink, appearing to read "Bruce S. Jenkins", written over a horizontal line.

Honorable Bruce S. Jenkins
U.S. District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2006, a true, correct and complete copy of the foregoing ORDER GRANTING PLAINTIFF'S APPLICATION TO FILE AN OVER-LENGTH MEMORANDUM IN OPPOSITION was delivered upon the attorney(s) indicated below by the following method(s):

| | |
|---------------|--------------------|
| <u> </u> | Facsimile |
| <u> X </u> | U.S. Mail |
| <u> </u> | Hand Delivery |
| <u> </u> | Overnight Delivery |
| <u> </u> | E-Mail |

Michael Patrick O'Brien, Esq.
Ali Levin, Esq.
Jones Waldo Holbrook & McDonough
170 South Main, Suite 1500
P.O. Box 45444
Salt Lake City, UT 84145-0444

/s/ David J. Holdsworth
David J. Holdsworth

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PEMMIE ALSUP, SGM. TOM ALSUP,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

MEMORANDUM DECISION
GRANTING DEFENDANT'S
MOTION TO DISMISS

Case No. 2:05-CV-000618 TS

The United States moves to dismiss this case because the Federal Tort Claims Act (FTCA)¹ statute of limitations expired long before Plaintiff Pemmie Alsup (Alsup) filed the complaint. The United States also argues that the complaint should be dismissed because without timeliness, this court has no subject matter jurisdiction. Finally, the United States argues for dismissal of the case because Alsup failed to exhaust all agency remedies. Alsup concedes that the named co-plaintiff, Alsup's husband, is not a properly named plaintiff herein.

The United States brings its Motion to Dismiss under Rule 12(b)(1) (lack of subject matter jurisdiction) and 12(b)(6) (failure to state a claim upon which relief may be granted). The

¹ 28 U.S.C. § 2401(b).

standard of review for a motion to dismiss for lack of subject matter jurisdiction under

Fed.R.Civ.P. 12(b)(1) is described as follows:

Generally, Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction take two forms. First, a facial attack on the complaint's allegations as to subject matter jurisdiction questions the sufficiency of the complaint. In reviewing a facial attack on the complaint, a district court must accept the allegations in the complaint as true. Second, a party may go beyond allegations contained in the complaint and challenge the facts upon which subject matter jurisdiction depends. When reviewing a factual attack on subject matter jurisdiction, a district court may not presume the truthfulness of the complaint's factual allegations.²

This Court is reviewing a facial attack on the complaint as to subject matter jurisdiction and therefore accepts the allegations in the Complaint as true.

I. BACKGROUND/TIME LINE

The following time line of undisputed dates is helpful for a FTCA analysis:

| | |
|---------------|--|
| July 19, 2002 | Alsup filed her first complaint against the United States; case no. 1:02-CV-89 (Initial Complaint). Her administrative claim was pending against the Air Force when she filed the Initial Complaint. |
| Aug. 13, 2002 | Alsup's claim is denied by the Air Force and Alsup is notified of the six month statute of limitations for appeal. Time begins to run. |
| Feb. 13, 2003 | The six month statute of limitations expired for filing suit against the United States. |
| June 30, 2004 | United States moves to dismiss the Initial Complaint or in the alternative for summary judgment. |
| July 13, 2004 | Letter from Assistant United States Attorney to Alsup discussing voluntary dismissal and warning that Alsup should review the law re: timeliness. |
| July 26, 2004 | Initial Complaint dismissed by voluntary stipulation (without response to pending motions to dismiss or motion for summary judgment). |

² *Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995) (citations omitted).

Jan. 27, 2005 Statute of limitations to bring a tort claim before an administrative agency expires.

July 21, 2005 Present case filed.

The United States moves to dismiss because Alsup filed this complaint outside the six-month time frame provided by the FTCA and because the FTCA only waives sovereign immunity for timely filed claims. Because sovereign immunity is not waived, the United States claims there is no jurisdiction and that Alsup fails to state a claim upon which relief may be granted.

Alsup asserts that the United States is arguing the Initial Complaint was defective, and based on this defect, she should be granted equitable tolling of the statute of limitations. The Court will first address the law on statute of limitations and sovereign immunity, followed by a review of equitable tolling.

II. STATUTE OF LIMITATIONS/ SOVEREIGN IMMUNITY

The United States argues sovereign immunity applies because the complaint was untimely filed, nearly two and a half years after the statute of limitations expired. Sovereign immunity applies *unless* a tort claim is presented to the administrative agency within two years of the claim or if the claimant filed a civil action within six months of the mailing of the final denial.³ Although the FTCA uses the word “or” for requirements to file suit, case law requires both elements to be met.⁴ Here, the Air Force denied Alsup’s claim on Aug. 13, 2002 and Alsup

³ 28 U.S.C. § 2401(b). *Nero v. Cherokee Nation of Okla.*, 892 F.2d 1457, 1464 (10th Cir. 1989) (citations omitted) (holding that plaintiffs must exhaust a jurisdictional bar under the FTCA).

⁴ *Pipkin v. United States Postal Serv.*, 951 F.2d 272, 274-75 (10th Cir. 1991), *see also*, Pls.’ Mot. in Opp.’n to Mot. to Dismiss, p. 3 (Docket No. 5).

filed the current action on July 21, 2005. Thus, Alsup did not file the complaint in a timely manner.

In a Tenth Circuit case, *Pipkin v. USPS*, the court held it must strictly construe the United States' sovereign immunity.⁵ There the plaintiff filed a complaint before exhausting all administrative remedies. The first complaint was dismissed without prejudice for failure to prosecute.⁶ The second complaint was based on the same claims as the first.⁷ The district court dismissed the second complaint's claims because they were not timely, and the Tenth Circuit affirmed the dismissal.⁸ As in *Pipkin*, Alsup's subsequent complaint is not timely filed and must be dismissed.

III. EQUITABLE TOLLING

Alsup argues that the time for filing should be equitably tolled. Federal courts have allowed equitable tolling only sparingly – when a *defective* pleading was filed during the statutory time or where there was trickery.⁹ The Supreme Court has “generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.”¹⁰ Equitable tolling, however, is not applicable to the FTCA.¹¹ Even

⁵ *Pipkin*, 951 F.2d at 275 (“In construing the FTCA’s statute of limitations, courts should not extend that waiver beyond congressional intent.”).

⁶ *Id.* at 274.

⁷ *Id.*

⁸ *Id.* at 275.

⁹ *Id.* (emphasis added).

¹⁰ *Id.*

¹¹ *Wukawitz v. United States*, 170 F.Supp.2d 1165, 1168 (D.Utah 2001).

if equitable tolling applied, it would not apply to this case for two reasons. First, Alsup has not shown her Initial Complaint was defective. Second, the claimed defect in the Initial Complaint is irrelevant because Alsup voluntarily dismissed that case. Nonetheless, Alsup simply argues the time should be equitably tolled without any relevant supporting facts or case law.

Alsup argues that because the United States described the Initial Complaint as defective, it is within the FTCA's equitable tolling provision.¹² In the United States' Memorandum,¹³ the United States discusses the attempt to change the defendant to the United States instead of James Roche in the Initial Complaint. The United States, however, never uses the word "defective" to describe this error. Basically, Alsup is arguing that because the government discussed her attempt to amend the Initial Complaint, the Court should find that the government's position is that the Initial Complaint was defective, and therefore equitable tolling applies.¹⁴ If this is Alsup's argument for defectiveness, it fails completely because the Initial Complaint was *voluntarily* dismissed and the Court is only concerned with the case at hand.¹⁵ Alsup pleads with the court for leniency, without legal endorsement, requesting that deficiency may be found and she be allowed to proceed with her claim. Because Alsup did not point out what the supposed defect is,

¹² Pls.' Mot. in Opp.'n to Mot. to Dismiss, pp. 2, 4 (Docket No. 5) ("The Defendant in its current memorandum has made the arguments that Plaintiff's original filing was defective." The only other mention of defectiveness is when Alsup repeats the above statement and then asks "[i]f this Court finds that the original pleadings were in fact defective Plaintiff would ask that she be allowed to proceed in this manner.").

¹³ Def.'s Mem., at 2, n 1.

¹⁴ Pls.' Mot. in Opp.'n to Mot. to Dismiss, p. 4 (Docket No. 5).

¹⁵ Ironically, Alsup needs to amend this Complaint to remove Sgt. Alsup or this court must partially grant the motion to dismiss as to Sgt. Alsup. However, neither side is arguing this creates a defective pleading relevant to the FTCA statute of limitations.

the Court is left to make its own conclusions. Therefore, the Court will not interpret Defendant's Memorandum in Support of its Motion to suggest it took the position that the Initial Complaint was defective.

Alsup argues that the Supreme Court case of *Irwin v. Dept. of Veterans Affairs*, is binding and equitably tolls the statute of limitations when the claimant files a timely but defective pleading.¹⁶ However, *Irwin* did not involve the FTCA. The *Irwin* court held that a complaint filed 14 days after the EEOC statute of limitations expired was outside the "absolute jurisdictional limit."¹⁷ Equitable tolling does not apply here. Even if it did, Alsup would not be entitled to it because she has not shown she filed a timely but defective complaint.

IV. CONCLUSION

Under the guidance of *Pipkin* and *Wukawitz*, this Court must grant the motion to dismiss. Congress intended to protect the United States and protect those individuals with tort claims against the United States, by creating a defined window during which tort claims may be adjudicated. Equitable tolling does not apply to FTCA claims. Even if it did, the facts, viewed in the light most favorable to Ms. Alsup's claims, do not support any right to equitable tolling.

Unfortunately for Ms. Alsup, when she voluntarily dismissed the Initial Complaint her right to pursue her claims and this Court's jurisdiction were lost. The last day she could sue the United States was February 13, 2003. Therefore,

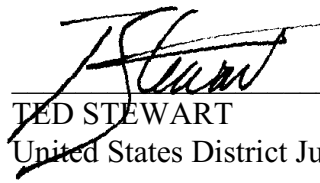
¹⁶ *Irwin v. Dept. of Veterans Affairs*, 498 U.S. 89, 96 (1990) (discussing federal government's waiver of sovereign immunity for Title VII claims).

¹⁷ *Id.* at 92.

IT IS HEREBY ORDERED that the United States' Motion to Dismiss [Docket No. 3] is GRANTED. The Clerk of the Court is directed to close the case.

DATED September 14, 2006.

BY THE COURT:



TED STEWART
United States District Judge

NOTICE: This document is not to be distributed outside the project.

OFFICE OF
DAVID S. M.

Attorneys for Plaintiffs

Case No.: 2:05-CV-00639 DS
Judge: David Sam

Page 1 of 3

1. Defendant Heath D. Johnson received service in this state by delivery of a Summons and Complaint on September 30, 2005.
2. Defendant Heath D. Johnson is in default for failure to file an Answer or any type of responsive pleading and entry of default has been made.
3. Defendant is not an infant or incompetent person.
4. Plaintiffs' costs in this case include \$230.00 for filing the complaint and \$75.00 for service.

Therefore, the court hereby enters an order enjoining Heath D. Johnson from harassing, threatening or otherwise contacting Plaintiffs and/or individuals known by Defendant to be Plaintiffs' family members and associates.

It is further ordered that pursuant to rule 55 (b)(2) of Federal Rules of Civil procedure, this matter be set for a Hearing before this Court to more thoroughly establish

/

/

/

/

the scope of damages for all general, consequential, special, and/or punitive damages and costs incurred under these causes of action in an amount to be proved at trial.

ATTEST my hand and the seal of this Court this 12th day of September 2006.

BY:

David Sam
JUDGE DAVID SAM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DISABLED RIGHTS ACTION COMMITTEE,
a Utah nonprofit corporation; and BARBARA
TOOMER,

Plaintiffs,

vs.

TROPHY HOMES, L.C, a Utah Limited
Liability Company; DOES I-L; and ROE
ENTITIES I-L,

Defendants.

**ORDER GRANTING PLAINTIFF'S
MOTION TO ADD PARTIES**

Civil No. 2:05CV00737

This matter is before the court on plaintiffs' motion to add parties by way of filing a Second Amended Complaint, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure. The court grants this motion.

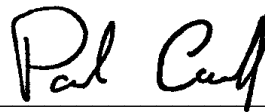
"Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded."¹ The plaintiffs' First Amended Complaint named fictitious parties as defendants. Throughout the course of discovery, the plaintiffs ascertained the identities of the true defendants. The plaintiffs' proposed Second Amended Complaint, which the court has

¹*Forman v. Davis*, 371 U.S. 178, 182 (1962).

reviewed, adds no causes of action or pleas for relief; it only adds parties who are now known to the plaintiffs. In fact, the defendant, Trophy Homes, named many of the same parties in its proposed Third-Party Complaint.² Finally, the plaintiffs' motion is timely in that it was filed by the deadline for adding parties, August 31, 2006. For these reasons, the court GRANTS the plaintiffs' Motion to Add Parties [#18].

DATED this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Hon. Paul G. Cassell
United States District Court Judge

²See Stipulated Motion for Leave to File Third-Party Complaint, Docket No. 17, Ex. 2.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CONNOR SPORT COURT
INTERNATIONAL, INC., a Delaware
Corporation,

Plaintiff,

vs.

CHAMBERLIN LANDSCAPING, INC., an
Iowa Corporation; and DARIN L.
CHAMBERLIN, an individual,

Defendants.

ORDER AMENDING SCHEDULING
ORDER

Case No. 2:05-cv-00813

Having been apprised of the facts and for good cause shown, the deadlines currently set forth in the Court's Scheduling Order, dated November 14, 2005, are modified as follows. The times and deadlines set forth herein may not be modified without approval of the court and upon a showing of good cause.

1. AMENDMENT OF PLEADINGS/ADDING PARTIES – no change
2. RULE 26(a)(2) REPORTS FROM EXPERTS
 - a. Plaintiff – changed from 6/30/2006 to 10/2/06
 - b. Defendant – changed from 7/31/06 to 10/13/06
 - c. Counter Reports – changed from 8/31/06 to 10/23/06

3. OTHER DEADLINES

- a. Discovery to be completed by:

Fact discovery – changed from 6/2/06 to 10/2/06

Expert discovery – changed from 9/15/06 to 10/27/06

- b. (optional) Rule 26 (e) supplementation – no change

- c. Deadline for filing dispositive or potentially dispositive motions – changed
from 10/6/06 to 11/03/06

4. TRIAL AND PREPARATION FOR TRIAL:

- a. Rule 26(a)(3) Pretrial Disclosures

Plaintiffs – no change

Defendants – no change

Objections to Rule 26(a)(3) Disclosures – no change

- b. Special Attorney Conference on or before – no change

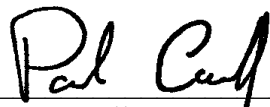
- c. Settlement Conference on or before – no change

- d. Final Pretrial Conference – no change

- e. Trial – no change

DATED this 14th day of September, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

2005 SEP 13 P 2:32

ALLEN WOLFSON,)
)
Plaintiff,) Case No. 2:05-CV-874 DB
)
v.) District Judge Dee Benson
)
RON NUTT et al.,) **ORDER**
)
Defendants.)

Incarcerated plaintiff, Allen Wolfson, has filed a *pro se* civil rights complaint. See 42 U.S.C.S. § 1983 (2006).

Plaintiff's application to proceed *in forma pauperis* has been granted. Plaintiff now moves (twice) for service of process.

These motions are unnecessary because Plaintiff is proceeding *in forma pauperis*. See 28 *id.* § 1915. In such cases, "[t]he officers of the court shall issue and serve all process, and perform all duties in such cases." See *id.* § 1915(d). The Court will screen Plaintiff's amended complaint at its earliest convenience and determine whether to dismiss it or order it to be served upon Defendants. See *id.* § 1915A. Plaintiff need do nothing to trigger this process.

IT IS HEREBY ORDERED that Plaintiff's motions for service of process are denied, (see File Entry #s 6 & 8); however, if, after

the case is screened, it appears that this case has merit and states a claim upon which relief may be granted, the Court will order service of process.

DATED this 31st day of August, 2006.

BY THE COURT:



DEE BENSON, CHIEF JUDGE
United States District Court

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

AMANDA U. AJULUCHUKU,

**Plaintiff,
vs.**

ZIONS BANCORPORATION,

Defendant.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:05CV906 DAK

This matter is before the court on Plaintiff's Objection to the Magistrate's Report and Recommendation. On November 17, 2005, this case was referred to the Magistrate Judge under 28 U.S.C. § 636(b)(1)(B). On April 26, 2006, Defendant filed a Motion for Summary Judgment. On August 25, 2006, the Magistrate Judge issued a Report and Recommendation, recommending that Defendant's Motion for Summary Judgment be granted. The Magistrate Judge also recommended that Plaintiff be placed on the restricted filers list, barring her from filing any lawsuits in the District of Utah without first being granted leave of court.

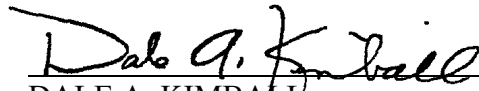
On September 5, 2006, Plaintiff filed an objection to the Report and Recommendation, which the court has considered, along with the entire case file. Defendant filed a response to the objection on September 7, 2006. Plaintiff's Objection has raised no valid objection to the Report and Recommendation.

Having reviewed the file in its entirety, the court hereby APPROVES and ADOPTS the Magistrate Judge's Report and Recommendation. Defendant's Motion for Summary Judgment is

GRANTED. All remaining motions are MOOT. This action is hereby DISMISSED with prejudice. The Clerk of the Court is directed to place Plaintiff on the restricted filers list, barring her from filing any lawsuits in the District of Utah without first being granted leave of court.

DATED this 14th day of September, 2006.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT 2006 SEP 13 P 4:58

DISTRICT OF UTAH, CENTRAL DIVISION

DISTRICT OF UTAH

DEPUTY CLERK

SHANE BRONSON,

Plaintiff,

vs.

JO ANNE B. BARNHART,
Commissioner Of Social Security,

Defendant.

Court No. 2:05CV 00933TC

SCHEDULING ORDER


Honorable Tena Campbell

The Court establishes the following Scheduling Order:

1. The answer of the Defendant is on file.
2. Plaintiff's brief should be filed on or before November 13, 2006.
3. Defendant's answer brief should be filed on or before December 13, 2006.
4. Plaintiff may file a reply brief on or before December 27, 2006.

DATED this 11 day of September, 2006.

BY THE COURT:


~~Honorable Tena Campbell~~
~~United States District Court~~

DAVID NUFFER
U.S. Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CHRISTOPHER EMERSON,

Plaintiff,

vs.

TANI DOWNING,

Defendant.

ORDER TO SHOW CAUSE

Case No. 2:05-cv-01023-PGC-PMW

Judge Paul G. Cassell

Magistrate Judge Paul M. Warner

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Paul G. Cassell pursuant to 28 U.S.C. § 636(b)(1)(B). Christopher Emerson ("Plaintiff") is hereby ordered to show cause why this case should not be dismissed with prejudice, as service of process has not been completed within one hundred twenty (120) days as required by rule 4(m) of the Federal Rules of Civil Procedure. Plaintiff's complaint was filed on December 9, 2005 and has been pending since that date with no activity. Accordingly, Plaintiff is directed to respond in writing within fifteen (15) days from the date of this order to inform the court of the status of the case and his intentions to proceed. Plaintiff's failure to do so will result in dismissal of the case.

DATED this 14th day of September, 2006.

BY THE COURT:



PAUL M. WARNER
United States Magistrate Judge

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SEP 11 2006

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

FILED
U.S. DISTRICT COURT

2006 SEP 13 P 2:26

Prepared and Submitted By:

Blake D. Miller (#4090)
MILLER GUYMON, P.C.
165 South Regent Street
Salt Lake City, Utah 84111
Telephone: (801) 363-5600
Facsimile: (801) 363-5601

Attorneys for Scott W. Livingston, personal representative of the Estate of Jerry Palensky, Josef Palensky, Marie Masna and Jiri Palensky

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

LINDA W. FIELDS,

Plaintiff,

v.

**CUNA MUTUAL INSURANCE SOCIETY,
INC.,**

Defendant.

**ORDER GRANTING
EXTENSION OF TIME TO FILE
REPLY MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Case No. 2:05CV01027 BSJ

Honorable Bruce S. Jenkins

**CUNA MUTUAL INSURANCE
SOCIETY, INC.,**

Counterclaim-Plaintiff,

v.

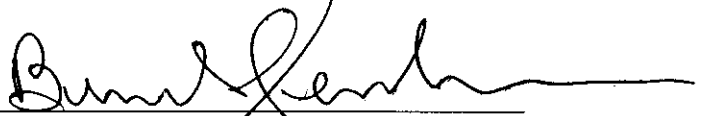
**LINDA W. FIELDS, ESTATE OF
JERRY PALENSKY, JOSEF
PALENSKY, MARIE MASNA, JIRI
PALENSKY, and DOES 1-10,**

Counterclaim-Defendants.

Upon consideration of the Motion for Extension of Time to File Reply Memorandum in Support of Motion for Summary Judgment, the stipulation of Linda Fields to that motion, and good cause shown, it is hereby ORDERED that the Scott W. Livingston, as personal representative of the estate of Jerry Palensky, shall have until Friday, September 8, 2006, to file his Reply Memorandum.

DATED this 7 day of September 2006.

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION



Honorable Bruce S. Jenkins

Approved as to Form:

MILLER GUYMON, P.C.

/s/ Blake D. Miller

Blake D. Miller, Esq.

Attorneys for Scott W. Livingston, personal
representative of the Estate of Jerry Palensky,
Josef Palensky, Marie Masna and Jiri Palensky

Approved as to Form:

STRONG & HANNI, P.C.

/s/ J. Simon Cantarero

Glenn C. Hanni, Esq.

Scott R. Jenkins, Esq.

J. Simon Cantarero, Esq.

Attorneys for Plaintiff/Counterclaim-Defendant
Linda W. Fields

UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

UTAH

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

RICHARD A. SCHNURR

Case Number: DUTX206CR000113-001

USM Number:

Audrey James, FPD

Defendant's Attorney

FILED
U.S. DISTRICT COURT

2006 SEP 13 P 3:41pm

CLERK OF COURT

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Misdemeanor Information

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|-----------------|------------------------------|---------------|-------|
| 18 U.S.C § 641 | Embezzlement of Public Money | | 1 |

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/28/2006

Date of Imposition of Judgment

Signature of Judge

Name of Judge

Title of Judge

Date

DEFENDANT: RICHARD A. SCHNURR
CASE NUMBER: DUTX206CR000113-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: RICHARD A. SCHNURR
CASE NUMBER: DUTX206CR000113-001

PROBATION

The defendant is hereby sentenced to probation for a term of :

twelve months

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☐ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: RICHARD A. SCHNURR
CASE NUMBER: DUTX206CR000113-001

ADDITIONAL PROBATION TERMS

1. The defendant must seek and maintain verifiable full-time employment
2. The defendant shall provide probation full access to all requested financial information
3. The defendant is prohibited from participating in any manner in the affairs of any federally regulated financial institution
4. The defendant shall not have direct or indirect control over the assets or funds of others

DEFENDANT: RICHARD A. SCHNURR
CASE NUMBER: DUTX206CR000113-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
|--------|-------------------|-------------|--------------------|
| TOTALS | \$ 25.00 | \$ 500.00 | \$ |

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss*</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|--------------------|----------------------------|-------------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

| | | |
|--------|----------------|----------------|
| TOTALS | \$ <u>0.00</u> | \$ <u>0.00</u> |
|--------|----------------|----------------|

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: RICHARD A. SCHNURR
CASE NUMBER: DUTX206CR000113-001

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

1. The defendant may, within 60 days, elect to pay a fine in the amount of \$500.00 or complete 100 hours of community service through a secular, non-profit organization. The fine or community service hours is/are due in 12 months.

DEFENDANT: RICHARD A. SCHNURR
CASE NUMBER: DUTX206CR000113-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
1. The defendant may, within 60 days, elect to pay a fine in the amount of \$500.00 or complete 100 hours of community service through a secular, non-profit organization. The fine or community service hours is/are due in 12 months.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: RICHARD A. SCHNURR
CASE NUMBER: DUTX206CR000113-001
DISTRICT: UTAH

STATEMENT OF REASONS
(Not for Public Disclosure)

VII COURT DETERMINATIONS OF RESTITUTION

- A ☐ Restitution Not Applicable.
- B Total Amount of Restitution: _____
- C Restitution not ordered (Check only one.):
- 1 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
 - 2 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
 - 3 ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
 - 4 ☐ Restitution is not ordered for other reasons. (Explain.)
- D ☐ Partial restitution is ordered under 18 U.S.C. § 3553(c) for these reasons:

VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's Residence Address: _____

Defendant's Mailing Address: _____

Date of Imposition of Judgment _____

Signature of Judge _____

Name of Judge _____

Title of Judge _____

Date Signed _____

UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

FILED
U.S. DISTRICT COURT
UTAH

UNITED STATES OF AMERICA

V.

ARTURO TRELLES-ALCAZAR

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 206CR000198 -001

USM Number: 13491-081

Robin Ljungberg

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 3 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|----------------------------|---|----------------------|--------------|
| 21 USC § 841(a)(1) | Distribution of 50 Grams or More of Methamphetamine | | 3 |

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1, 2 and 4 ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/7/2006

Date of Imposition of Judgment

Signature of Judge

Ted Stewart

Name of Judge

U.S. District Judge

Title of Judge

9/8/2006

Date

DEFENDANT: ARTURO TRELLES-ALCAZAR
CASE NUMBER: DUTX 206CR000198 -001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

87 months

☒ The court makes the following recommendations to the Bureau of Prisons:

1. BOP to assess and properly treat defendant's medical conditions (specifically Diabetes).
2. Incarceration in So. Calif if consistent with medical needs.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ARTURO TRELLES-ALCAZAR
CASE NUMBER: DUTX 206CR000198-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: ARTURO TRELLES-ALCAZAR
CASE NUMBER: DUTX 206CR000198-001

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall not re-enter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

CRIMINAL MONETARY PENALTIES

| | | | |
|---------------|-------------------|-------------|--------------------|
| TOTALS | \$ 100.00 | \$ | \$ |
| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |

- If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ARTURO TRELLES-ALCAZAR
CASE NUMBER: DUTX 206CR000198 ~001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

FILED
U.S. DISTRICT COURT

2006 SEP 13 P 2:28

UNITED STATES OF AMERICA,

:

Plaintiff,

:

Case No. 2:06CR-00516DS

-vs-

:

ORDER

:

MARCUS ALVEREZ,

:

Defendant.

Based on a Motion to Suppress Evidence and Statements filed by defendant and good cause appearing,

IT IS HEREBY ORDERED:

1. The jury trial set in this case for October 16, 2006, is continued without date pending resolution of the issues raised in the Motion to Suppress. An evidentiary hearing on the Motion to Suppress is set for November 14, 2006, at 2:00 p.m.

2. In order to provide adequate preparation time, the opportunity for the taking of evidence and briefing and to promote continuity of counsel, pursuant to 18 U.S.C. 3161(h)(1)(F), the Court finds that the ends of justice served by a continuance of trial in this case outweigh the best interests of the public and the defendant in a speedy trial. Therefore, the time between the filing of the Motion to Suppress and the disposition of the issues raised in the motion is excluded

from computation for speedy trial purposes.

DATED this 13th day of September, 2006.

A handwritten signature in cursive script, appearing to read "David Sam", is written above a horizontal line.

DAVID SAM, Senior Judge
United States District Court

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

FILED
US DISTRICT COURT
SEP 13 P 2:28

UNITED STATES OF AMERICA,

:

Plaintiff,

:

Case No. 2:06CR-00516DS

-vs-

:

ORDER

:

MARCUS ALVEREZ,

:

Defendant.

This matter came before the Court on September 12, 2006, at 2:00 p.m. based on Defendant's Motion to Review Detention Order; defendant appeared in person and was represented by Richard G. MacDougall, First Assistant Federal Defender; Plaintiff was represented by J. Eric Bunderson, Special Assistant United States Attorney; the Court being fully advised and good cause appearing,

IT IS HEREBY ORDERED:

Upon a space becoming available, without further hearing, defendant shall be released from the custody of the United States Marshal to reside at Cornell Community Corrections Center on the following conditions:

1. Defendant shall be permitted work search privileges and work release upon finding suitable employment.
2. Defendant shall submit to random drug and alcohol testing and, if defendant tests positive, defendant has agreed and shall submit to substance abuse counseling and treatment.
3. Defendant is to have no contact with any witness in the case against him, except

through his attorney.

4. Defendant is prohibited from having contact with any known member of any street gang or anyone associated with any street gang.

5. Defendant shall otherwise abide by all rules and regulations governing residents of Cornell Community Corrections Center.

DATED this 13th day of September, 2006.

A handwritten signature in cursive script, appearing to read "David Sam", is written above a horizontal line.

DAVID SAM, Senior Judge
United States District Court

Randy S. Ludlow #2011
Attorney for Defendant
Mickey Jay Kaletta
185 South State Street, Suite 208
Salt Lake City, Utah 84111
Telephone: (801) 531-1300
Fax: (801) 328-0173

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION


| | | | |
|---------------------------|---|----------------------------|---|
| UNITED STATES OF AMERICA, | : | | |
| | : | ORDER ALLOWING | |
| Plaintiff, | : | WITHDRAWAL | |
| | : | | |
| vs. | : | | |
| | : | Case No: 2:06-CR-00536 DAK | |
| MICKY JAY KALETTA, | : | | |
| | : | Judge Dale A. Kimball | : |
| Defendant. | : | | |

THE ABOVE ENTITLED MATTER HAVING COME BEFORE THE COURT on Ex Parte Motion of Randy S. Ludlow to be allowed to withdraw as the attorney for the defendant based upon the defendant requesting the same. Based upon such and for good cause appearing herein,

IT IS HEREBY ORDERED THAT Randy S. Ludlow is withdrawn as the attorney for the defendant, Micky Jay Kaletta.

DATED this 14th day of September, 2006.

BY THE COURT:



U. S. District Judge

FILED
U.S. DISTRICT COURT
2006 SEP 14 P 2:30

Bryan K. Benard, 9023
HOLLAND & HART LLP
60 E. South Temple, Suite 2000
Salt Lake City, Utah 84111-1031
(801) 595-7800

*Attorneys for Defendant
Maxim Healthcare Services, Inc.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

| | | |
|---|---|-----------------------------|
| TIFFANY M. ANDREWS and ERIN L. DWAN |) | ORDER GRANTING WITHDRAWAL |
| |) | AND SUBSTITUTION OF COUNSEL |
| Plaintiffs, |) | FOR DEFENDANT |
| |) | |
| v. |) | Civil No. 2:06CV00050BSJ |
| |) | |
| MAXIM HEALTHCARE SERVICES, INC., a Maryland Corporation |) | Judge Bruce S. Jenkins |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |
| |) | |

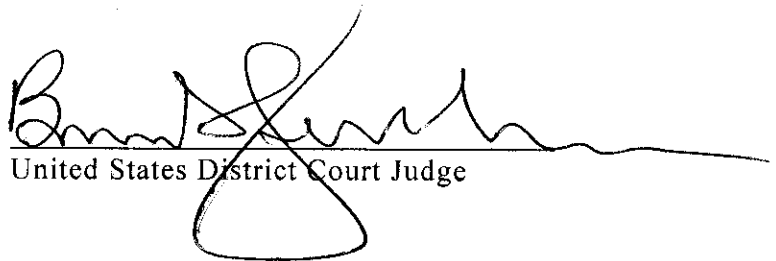
Based on the Notice of Withdrawal filed by Holland & Hart, the consent of Defendant Maxim Healthcare Services, Inc. and decision to use different counsel, that competent counsel has been substituted, and good cause appearing, therefore:

IT IS ORDERED that Holland & Hart, LLP and Bryan K. Benard is hereby withdrawn as counsel.

DATED

9/14/

2006.


United States District Court Judge

FILED
U.S. DISTRICT COURT
2006 SEP 14 A 7:42
CLERK OF DISTRICT COURT
JAMES L. CLARK

Prepared and Submitted By:
Todd M. Shaughnessy (6651)
SNELL & WILMER, LLP
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800
E-mail: tshaughnessy@swlaw.com

Attorneys for Plaintiffs
Carmax Auto Superstores, Inc. and
Carmax Business Services, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CARMAX AUTO SUPERSTORES, INC.,
and CARMAX BUSINESS SERVICES, LLC,

Plaintiffs,

vs.

CARS-MART OREM, LLC; CARS-MART
USA, LLC; CARS-MART SPRINGVILLE,
LLC; and CARS-MART PROPERTIES, LLC,

Defendants.

**ORDER OF DISMISSAL WITH
PREJUDICE**

Case No. 2:06cv00120

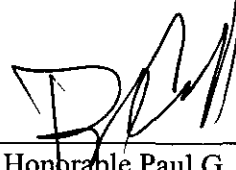
Honorable Paul G. Cassell

Based upon the stipulation of the parties, and for other good cause appearing,

IT IS HEREBY ORDERED that the above-captioned matter is dismissed with prejudice and
on the merits. Each party shall bear its own respective attorney's fees and costs.

DATED this 19th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. G. Cassell', written over a horizontal line.

Honorable Paul G. Cassell
United States District Court Judge

APPROVED AS TO FORM:

PARR, WADDOUPS, BROWN, GEE & LOVELESS

/s/ Timothy B. Smith
Timothy B. Smith
Attorneys for Defendants
(e-filed with authorization from counsel)

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

2006 SEP 14 P 2:07

WORLDWIDE MACHINERY, INC.,
a Texas Corporation,

Plaintiff,

vs.

WALL MACHINERY, INC., a Utah
corporation; and TRENT WALL, an
individual,

Defendants.

Case No. 2:06CV130 DS

MEMORANDUM DECISION
AND ORDER

I. INTRODUCTION

On February 12, 2005, Worldwide and Wall Machinery signed a written "Contract of Sale" for the sale by Wall Machinery to Worldwide of three large Caterpillar Model 789B trucks. The price was set at \$2,700,000 with a commission to be determined later. The trucks first had to be released by the mine owners, and the released date was not certain when the contract was signed. Wall refused to deliver the trucks to Worldwide and sold them to another party. Worldwide sued for breach of contract and fraud. Wall has filed this motion to dismiss, arguing that the contract is not enforceable because it lacks the necessary material terms. Wall also argues that the fraud claim is barred by the economic loss rule and by the fact that the elements were not plead with particularity. The Court disagrees and hereby denies Wall's motion to dismiss.

Wall Machinery filed its original Motion to Dismiss on April 12, 2006. In its May 11, 2006 Reply Memorandum in Support of the Motion to Dismiss, Wall Machinery included a motion to strike a number of factual allegations that were included in Worldwide's opposition brief but not in the original complaint. On June 7, 2006, Worldwide filed its Amended Complaint. Wall Machinery has conceded that Worldwide's Amended Complaint renders moot Wall's Motion to Strike the unsupported factual allegations in Worldwide's Response in Opposition to Motion to Dismiss. On July 20, 2006, Wall Machinery filed a Motion to Dismiss Amended Complaint. It is this motion that is now before the court.

II. STANDARD OF REVIEW

When considering a motion to dismiss under Rule 12(b)(6), F. R. Civ. P., the Court must accept as true all factual allegations in the Complaint and must resolve all reasonable inferences in the plaintiff's favor. *Arnold v. McClain*, 926 F.2d 963, 965 (10th Cir. 1991). The motion will be granted only if it appears beyond doubt that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief. *Id.* See also, *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1502 (10th Cir. 1995). Dismissal under rule 12(b)(6) is a "harsh remedy" which must be cautiously applied "to protect the interests of justice." *Bangerter*, at 1502.

III. ANALYSIS

A. Worldwide has plead sufficient facts in support of its breach of contract claims to overcome a 12(b)(6) motion.

Wall argues that the contract in this case is unenforceable because on its face it lacks the material terms necessary to form an enforceable contract. The material terms that are missing from the contract, according to Wall, are the price (the commission and the criteria for its determination) and the payment terms (when the commission would be paid).

Wall argues that Worldwide's allegations regarding the commission to be paid have changed with each of its pleadings. In the original complaint, Worldwide alleged that it had agreed to pay a "reasonable commission" based upon the "sales success" of the resale of the trucks. In its opposition to the Motion to Dismiss, Worldwide alleged that "the parties specifically discussed reasonable commission of 5%." And in the Amended Complaint, Worldwide alleged that Wall "agreed to the five percent (5%) commission." According to Wall, Worldwide's "evolving and inconsistent allegations" regarding the commission amount prove that the parties did not agree on the commission amount or how it was to be determined. And because the parties did not agree on a reasonable price or a method for determining one, Wall argues that the agreement is too indefinite and uncertain for enforcement.

The Court is not persuaded. Although some of the contract terms were left open, the Court finds that the contract does not fail for indefiniteness, because there is ample evidence that the parties intended to make a contract, and because there is a reasonably certain basis for giving an appropriate remedy.

In construing a contract, the intent of the contracting parties controls. Utah courts have held that if the language of the contract is ambiguous, the court may look at extrinsic evidence of the parties intentions. *Peterson v. Sunrider Corp.*, 48 P.3d 918, 925 (Utah 2002). In the present case, accepting as true the plaintiff's allegations, there is evidence that the parties discussed a reasonable commission of 5%. In any event, if the contract is incomplete or ambiguous, as Wall asserts, then parol or extrinsic evidence may be necessary to determine the parties' intent, and dismissal would be inappropriate at this stage.

The Court finds that the Uniform Commercial Code governs the sale of the trucks in this case. Wall Machinery's argument that U.C.C. Article 2 does not apply to this transaction because Wall served only as a broker and did not take title to the trucks, is unpersuasive. The plain language of the contract shows that it was a contract for the sale of goods. The contract states that "Wall Machinery, Inc. agrees to *sell* and Worldwide Machinery agrees to *buy*" the trucks. The contract also refers to "the company from whom Wall Machinery, Inc. *purchased* the trucks" (emphasis added). UCC Article 2 clearly applies.

Utah Code Ann. § 70A-2-204(3) specifically provides:

Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

In this case, both parties signed the contract whereby Wall Machinery agreed to sell the trucks to Worldwide at the specified price of \$2,700,000. The open terms regarding the commission on future resale and the time for delivery do not cause the contract to fail for indefiniteness. The UCC provides that parties to a contract "can conclude a contract for sale even though the price is

not settled.” *Utah Code Ann.* § 70A-2-305(1). So long as the quantity of goods is specified (the three trucks in this case), a missing price term does not affect the validity of the contract. The Utah Supreme Court has noted that “the role of the court as ‘gap filler’ is neither new nor revolutionary”:

If the parties have concluded a transaction in which it appears that they intend to make a contract, the court should not frustrate their intention if it is possible to reach a fair and just result, even though this requires a choice among conflicting meanings and the filling of some gaps that the parties have left.

U.C.C. § 2-204, Official Comment to Subsection (3). Accepting as true all the factual allegations in the Amended Complaint, the court finds that there is sufficient evidence that the parties in this case intended to make a contract. Factual issues, like those dealing with the amount and payment terms of the commission, will require consideration of all the evidence, and therefore, require denial of the motion to dismiss.

B. Worldwide has plead the elements of fraud with sufficient particularity.

Rule 9(b), Fed. R. Civ. P., requires “in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” To allege a viable claim for fraud, plaintiffs must “set forth in specific terms the time, place, content, and manner of each defendant’s alleged material misrepresentations or otherwise fraudulent conduct.” *Cook v. Zions First Nat’l Bank*, 645 F.Supp. 423, 424-425 (D. Utah 1986). In order to prevail on its fraud claim, Worldwide must prove that the material misrepresentations were made with the intent to defraud. Wall Machinery argues in its motion to dismiss, that Worldwide’s allegations regarding intent are mere speculation, and that “Worldwide alleges no other *facts* to sustain this essential element of intent.”

Again, the court disagrees. Worldwide has made numerous, specific factual allegations regarding the circumstances of the alleged fraud and the defendant's intent, including the following. Wall represented he had purchased the trucks from the Chilean company and that Wall would sell and deliver the trucks to Worldwide. Wall provided Worldwide with a copy of Wall's invoice for Wall's purchase of the trucks. Wall represented that it would provide an invoice reflecting the sale of the trucks by Wall to Worldwide. Wall's representations were false, and Wall knew the representations were false, at the time they were made. Wall never intended to sell the trucks to Worldwide. Wall had already sold the trucks to a third party. Later, when confronted, Wall falsely represented that the trucks sold to another company were different trucks and not the trucks Wall agreed to sell to Worldwide. This representation was false and known by Wall to be false when made. Wall urged Worldwide not to make further inquiry and not to take any further action regarding the trucks and falsely assured Worldwide that it would receive the trucks. Worldwide reasonably relied upon Wall's misrepresentations by foregoing further efforts to obtain similar trucks for resale in the active market of the time.

Wall Machinery argues that Worldwide's reliance was unreasonable, because the market was "extremely active and profitable" and Worldwide could have obtained similar trucks by continuing its search. Wall offers no explanation as to why Worldwide would have felt the need to try and obtain similar trucks, if it believed it had already purchased three trucks. At a minimum, these are factual issues which preclude dismissal under Rule 12(b).

Wall Machinery also argues that Worldwide relied on the alleged contract, not solely on the alleged misrepresentations of the defendant, in suspending its efforts to find other trucks. Therefore, according to Wall, "Worldwide's Amended Complaint fails to establish that it relied

upon the defendants' misrepresentations, which is an essential element of it fraudulent misrepresentation claim." Wall provides no support for its illogical conclusion that because Worldwide relied on the contract *and* the defendants' misrepresentations, it did not rely on the defendants' misrepresentations.

Finally, Wall Machinery argues that Worldwide fails to plead how it was damaged by the alleged misrepresentations. Again the court disagrees. Worldwide alleges that after Wall sold the trucks to a third party, the trucks were sold to a series of subsequent buyers at great profits exceeding \$1,800,000. All the subsequent buyers were companies known to Worldwide and to which Worldwide could have sold the trucks. Absent Wall's fraud, Worldwide would have obtained similar trucks from another source and participated in the resales and realized such profits. Clearly, Worldwide has plead sufficient damages to overcome a motion to dismiss its fraud claims.

C. The Economic Loss Doctrine does not bar Worldwide's Fraud Claims.

Wall Machinery argues that Worldwide's claim for fraudulent misrepresentation is barred by the economic loss rule. In Utah, the economic loss doctrine bars all tort claims that are not based on a duty independent of any contractual obligations between the parties. *Town of Alma v. Azco Constr. Inc.*, 10 P.3d 1256 (Colo. 2000), *Harmansen v. Tasulis*, 2002 UT 52, 48 P.3d 235, *Grynberg v. Questar Pipeline Co.*, 469 Utah Adv. Rep. 13, 20 (Utah 2003). Once the parties have entered into a contract, "any tort claim must be premised upon an independent duty that exists apart from the contract. All contract duties, and all breaches of those duties—no matter how intentional—must be enforced pursuant to contract law." *Grynberg*, at ¶43.

Wall Machinery argues that Worldwide alleged it relied on the contract and representations of Trent Wall and Wall Machinery in deciding not to search for other trucks. Also, Worldwide's claim for fraud damages in the amount of \$1,800,000 is the same amount it claims for its breach of contract claim. Therefore, according to Wall, Worldwide's tort claim is based on contractual duties and recites the same operative facts as Worldwide's breach of contract claim, so the tort claim is barred by the economic loss doctrine and must be dismissed.

It is fundamental, however, that a claim for fraud in the inducement cannot be barred by the economic loss doctrine. The doctrine only applies to bar tort claims that fall within the "bargained-for duties and liabilities" of a contract. *Grynberg*, at 18. The Tenth Circuit has stated:

Where a negligence claim is based only on breach of a contractual duty, the law of contract rightly does not punish the breaching party, but limits the breaching party's liability to damages that naturally flow from the breach. It is an altogether different situation where it appears two parties have in good faith entered into a contract but, in actuality, one party has deliberately made material false representations of past or present fact, has intentionally failed to disclose a material past or present fact, or has negligently given false information with knowledge that the other party would act in reliance on that information. . . . The breaching party in this latter situation also is a tortfeasor and may not utilize the law of contract to shield liability in tort for the party's deliberate or negligent misrepresentations.

United International Holdings v. Wharf Limited, 210 F.3d 1207 (10th Cir. 2002). In this case, Worldwide alleges that Wall Machinery deliberately made material false representations, knowing that Worldwide would, in reliance on those representations, enter into the contract to purchase the trucks.

In addition, Worldwide alleges that on March 3, 2005 Trent Wall and Wall Machinery made material false representations regarding the identity of the trucks sold to another company. Trent Wall allegedly also represented that further inquiries by Worldwide to other companies could jeopardize the sale to Worldwide. Amended Complaint ¶¶70. Worldwide alleges that Trent Wall made these representations to induce Worldwide's reliance in not making further inquiries regarding the trucks. As a direct and proximate cause of the fraudulent misrepresentations allegedly made by Trent Wall and Wall Machinery, and Worldwide's reliance thereon, Worldwide was effectively taken out of the active market for the trucks and competition in such market. Amended Complaint ¶¶74. The fraud claim in this case goes beyond the bargained for duties and liabilities of the contract; therefore, the economic loss rule does not apply.

It should also be noted that in any case, the economic loss rule would not apply to the fraud claims against Trent Wall where he was not a party to the Wall Machinery contract. The fraud claims against Trent Wall personally are independent of the breach of contract claims against Wall Machinery. For the foregoing reasons, the court holds that Worldwide's fraud claims are not barred by the economic loss rule.

VI. CONCLUSION

For the foregoing reasons Defendants Wall Machinery Inc. and Trent Wall's Motion to Dismiss Amended Complaint (Docket #17) is hereby denied. The Court also notes that the

Amended Complaint and this Decision render moot Defendants' original Motion to Dismiss (Docket #5) and Motion to Strike (Docket #14).

SO ORDERED.

DATED this 12th day of September, 2006.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "David Sam", is written over a horizontal line.

DAVID SAM
SENIOR JUDGE
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

TETYANA NAZARUK,

Plaintiff,

vs.

**eBAY, INC., ACE COINS, and ROBERT
BAGANZ,**

Defendant.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:06CV242 DAK

This matter is before the court on Plaintiff's Objection to the Magistrate's Report and Recommendation. On July 20, 2006, this case was referred to the Magistrate Judge under 28 U.S.C. § 636(b)(1)(B). On August 15, 2006, the Magistrate Judge held a hearing on Defendant eBay's Motion to Dismiss for Improper Venue or, in the Alternative, for Failure to State a Claim. On August 24, 2006, the Magistrate issued a Report and Recommendation, recommending that Defendant eBay's Motion to Dismiss based on improper venue be granted and that Defendant Ace Coin's Motion to Dismiss be granted.

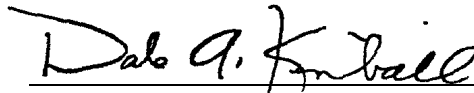
On August 31, 2006, Plaintiff filed an Objection to the Report and Recommendation, which the court has considered, along with the entire case file. Plaintiff has not cited any authority to suggest that the Magistrate's legal analysis was incorrect, and Plaintiff has not otherwise raised a valid objection to the Report and Recommendation.

Having independently reviewed the file in its entirety and the case law that this court is bound to apply, the court finds that the Magistrate's analysis was entirely correct. Therefore, the

court hereby APPROVES and ADOPTS the Magistrate Judge's Report and Recommendation. Defendant eBay's Motion to Dismiss for Improper Venue is GRANTED. Plaintiff's claims against eBay are DISMISSED without prejudice. Defendant Ace Coin's Motion to Dismiss is GRANTED, and Plaintiff's claims against it are DISMISSED with prejudice. There is no evidence in the record that Defendant Robert Baganz was ever served with a Summons and Complaint, and therefore he is DISMISSED without prejudice. The Clerk of the Court is directed to close this case.

DATED this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL

United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

GRANDWAY HONDURAS, LLC, a Utah
corporation, and GLOVABLES, INC., a
California corporation,

Plaintiffs,

vs.

TWO'S COMPANY, INC., a New York
corporation,

Defendant.

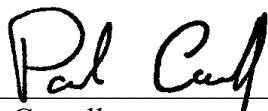
ORDER GRANTING MOTION TO
DISMISS WITHOUT PREJUDICE

Case No. 2:06-cv-00323

This case is before the court on the plaintiffs' motion to dismiss this action without prejudice. Because the plaintiffs have not served process on the defendant in this matter, the court GRANTS the plaintiffs' motion [#4], as a matter of right, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

DATED this 14th day of September, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

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DISTRICT COURT

2006 SEP 13 P 2:27

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

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DISTRICT COURT

| | | |
|--|---|--|
| SGW, a minor child, by and through her guardians and natural parents, SAW and SFW, | : | ORDER GRANTING MOTION TO DISCLOSE RECORDS |
| | : | |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| GRANITE SCHOOL DISTRICT, | : | |
| | : | Case No. 2:06-cv-00338 JTG |
| Defendant. | : | |

Based upon the Joint Motion and Stipulation to Disclose Records, and good cause appearing, the Court enters the following ORDER:

1. The Joint Motion to Disclose Records is granted.
2. The Court finds that:
 - a. the videotape created during the Salt Lake County Sheriff's Office investigation in case # 2004-114886 ("videotape") addresses matters in controversy over which the Court has jurisdiction;
 - b. the Court has considered the merits of the request for access to the videotape;

c. to the extent the videotape is properly classified as private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access;

d. when access is restricted by a rule, statute or regulation referred to in subsection 63-2-201(3)(b), the Court has authority independent of this chapter to order disclosure;

e. the Motion and Stipulation and the Court's Order comply with Utah Code Ann. § 63-2-202(7); and

f. § 63-2-801(1)(a) penalties do not apply.

3. The videotape in the possession, custody, or control of the Salt Lake County Sheriff's Office may be disclosed to the parties.

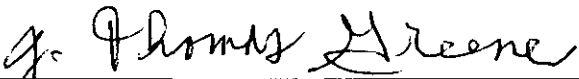
4. The parties may attach as exhibits documents or information disclosed in discovery that may be classified as private, controlled, or protected under GRAMA to the extent they are necessary to support an assertion in a pleading, motion, or declaration filed with the Court.

5. This Order does not authorize disclosure of the videotape to non-parties, the disclosure of which may still be subject to and limited by the provisions of GRAMA.

6. Any documents which are classified as private, controlled, or protected under GRAMA shall be for the limited use and review of the parties and their counsel only. The documents shall not be released to any person other than the parties, counsel of record and their legal support staff, until further order of the Court.

7. Parties who improperly disclose or release private, controlled, or protected records are subject to sanctions by the Court.

DATED this 13th day of September, 2006.



HONORABLE J. THOMAS GREENE
U.S. District Court Judge

APPROVED:

KIPP AND CHRISTIAN, P.C.

/S/ Gary T. Wight
NAN T. BASSETT
GARY T. WIGHT
Attorneys for Plaintiffs

UTAH ATTORNEY GENERAL

/S/
JONI J. JONES
Assistant Utah Attorney General
Attorney for Granite School District

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DENNIS C. FARLEY, #1034
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Fax: (801) 538-5001
phillip.lear@learlaw.com
dennis.farley@learlaw.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

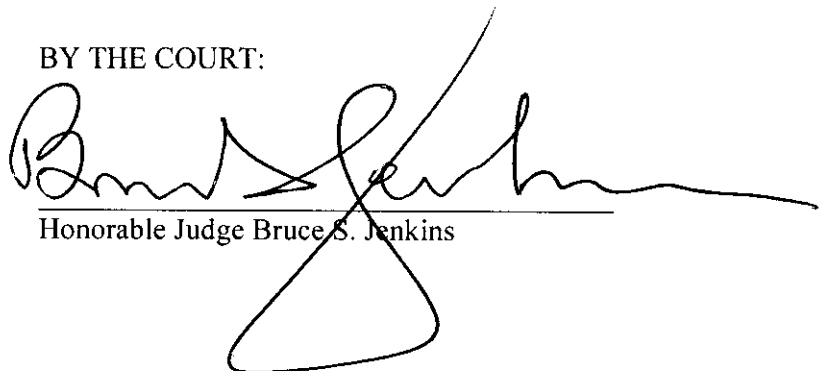
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|---|--|
| CHRISTIAN F. MURER Plaintiff, v. PLATEAU RESOURCES LIMITED, INC. Defendant. | ORDER GRANTING LEAVE TO FILE OVERLENGTH BRIEF Civil No. 2:06cv00393 BSJ Judge Bruce S. Jenkins |
|---|--|

Having considered the Motion of Plaintiff, Christian F. Murer ("Murer"), for leave to file its overlength brief in Opposition to Defendant's Motion for Judgment on the Pleadings, and good cause appearing therefor,

IT IS HEREBY ORDERED THAT Plaintiff is granted leave to file its overlength brief totaling approximately 16 pages.

9/12/06

BY THE COURT:


Honorable Judge Bruce S. Jenkins

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2006 SEP 13 P 2:27
OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ELMER LYNN WEST,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER DENYING MOTION FOR
RECONSIDERATION

Case No. 2:06-cv-00589

On August, 28, 2006, Elmer West, a *pro se* petitioner, filed a Motion for Reconsideration of “Motion Under Rule 60(b).” A motion for reconsideration is not a motion provided for under the Federal Rules of Civil Procedure. Even construing Mr. West’s motion liberally, as a Rule 60(b) motion, the court finds no grounds on which to grant the motion.

BACKGROUND

The background relevant to this order is largely procedural. Mr. West entered a guilty plea on November 18, 2004,¹ and this court sentenced him on January 19, 2005.² On October 17,

¹See Docket No. 39, *United States v. West*, Case No. 2:04-cr-00200 (D. Utah filed Nov. 18, 2004).

²See Docket No. 41, *United States v. West*, Case No. 2:04-cr-00200 (D. Utah filed Jan. 19, 2005).

2005, Mr. West filed a motion for post-conviction relief pursuant to 28 U.S.C. § 2255.³ The court denied this order.⁴ Mr. West filed another motion with this court on July 18, 2006, which the court construed as a successive motion for post-conviction relief pursuant to § 2255.⁵ The court denied this motion because Mr. West had not provided the court with a certificate from the Tenth Circuit allowing his successive § 2255 application.⁶ Mr. West responded to the court's order by filing this motion on August 31, 2006.

DISCUSSION

A court may grant a Rule 60(b) motion, relieving a party of the court's order, on numerous grounds, including mistake, surprise, neglect, newly discovered evidence, and other reasons justifying relief from judgment.⁷ Although Mr. West summarily claims otherwise, he has failed to provide evidence sufficient to support a grant of relief on any of these grounds. The court has reviewed his motion pursuant to Rule 60(b)(6), which allows for relief from judgment for "any other reason justifying relief"⁸ because this provision is the broadest and most open-ended.

³See Docket No. 1, *West v. United States*, Case No. 2:05-cv-00862 (D. Utah filed Oct. 17, 2005).

⁴See Docket No. 7, *West v. United States*, Case No. 2:05-cv-00862 (D. Utah filed Feb. 28, 2006).

⁵See Docket No. 1, *West v. United States*, Case No. 2:06-cv-00589 (D. Utah filed July 18, 2006).

⁶See Order Denying Motion for Post-Conviction Relief, Docket No. 2, *West v. United States*, Case No. 2:06-cv-00589 (D. Utah filed Aug. 9, 2006).

⁷Fed. R. Civ. P. 60(b).

⁸Fed. R. Civ. P. 60(b)(6).

In his motion for reconsideration, Mr. West appears to object to the court's characterization of his prior motion as a motion to obtain post-conviction relief pursuant to 28 U.S.C. § 2255. Instead, Mr. West argues, his motion was simply a Rule 60(b) motion seeking relief from the court's sentencing in Mr. West's underlying criminal case.

The court's characterization of Mr. West's Motion Under Rule 60(b) as a § 2255 motion for post-conviction relief was proper. In *United States v. Libretti*, the Tenth Circuit explained that a habeas claim adjudicated in a previous petition are properly characterized as a successive § 2255 motion, even when classed by the petitioner as a Rule 60(b) motion.⁹ Moreover, such claims must be dismissed unless they have been certified by a court of appeals, as they are "subject to the AEDPA's restrictions on successive habeas applications."¹⁰

The court properly characterized Mr. West's Motion Under Rule 60(b) as a successive § 2255 application because the arguments Mr. West offered in support of his Motion Under Rule 60(b) mirror those Mr. West made in his original § 2255 petition. Although worded differently, both motions rest on Mr. West's claim he was not a convicted felon at the time of his indictment. The court concludes, therefore, this argument is insufficient to merit relief from the court's Order Denying Motion for Post-Conviction Relief, and Mr. West has presented no other reasons justifying relief.

If Mr. West wishes the court to entertain a successive § 2255 application, he must comply with the statute's requirements providing the requisite certification from the Tenth Circuit.¹¹ The

⁹2006 U.S. App. LEXIS 22662, *7–8 (10th Cir. 2006).

¹⁰*Id.*

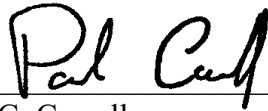
¹¹*See* 28 U.S.C. § 2255.

court, therefore, DENIES the petitioner's Motion for Reconsideration of "Motion Under Rule 60(b)" [#5].

SO ORDERED.

DATED this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge

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SEP 07 2006

OFFICE OF U.S. DISTRICT JUDGE

BRUCE S. JENKINS

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

JUDGE'S COPY

2006 SEP 13 P 2:26

RUDOLPH SKUBELLA, On Behalf of Himself
and All others Similarly Situated

Plaintiff

v.

NPS PHARMACEUTICALS, INC. et al

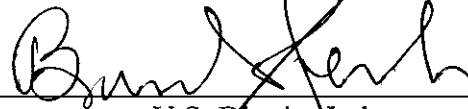
Defendant.

ORDER FOR PRO HAC VICE ADMISSION

Case Number 2:06cv00648 BSJ

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Arthur L. Shingler in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 11 day of Sept, 2006.



U.S. District Judge

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U.S. DISTRICT COURT

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U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

U.S. DISTRICT COURT

RUDOLF SKUBELLA,
Plaintiff

v.

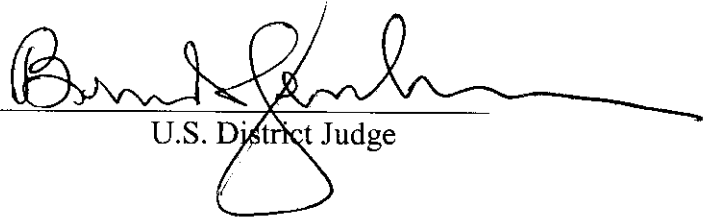
NPS PHARMACEUTICALS, ET AL.
Defendant

:
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: ORDER FOR PRO HAC VICE ADMISSION
:
:
:

: Case Number 2:06CV00648 BSJ

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of DAVID R. SCOTT in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 11 day of Sept, 2006.


U.S. District Judge

FEE PAID

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
DISTRICT COURT

2006 SEP 13 P 2:32

VINCENT F. RIVERA,)
)
Plaintiff,) Case No. 2:06-CV-666 DB
)
v.) District Judge Dee Benson
)
RICHARD HUNTSMAN et al.,) **O R D E R**
)
Defendants.)

Plaintiff, Vincent F. Rivera, filed a prisoner civil rights complaint and asked to proceed *in forma pauperis*.¹ This Court, however, will not let an inmate proceed *in forma pauperis* if the inmate has, at three or more prior times while incarcerated, brought an action that was dismissed as "frivolous or malicious or fail[ing] to state a claim upon which relief may be granted."² The only exception is if the inmate can show that he or she is "under imminent danger of serious physical injury."³

Plaintiff has filed several previous civil actions with the federal courts, many of which have been dismissed as frivolous or failing to state a claim.⁴ Plaintiff therefore may not maintain

¹See 42 U.S.C.S. § 1983 (2006); 28 *id.* § 1915.

²28 *id.* § 1915(g).

³*Id.*

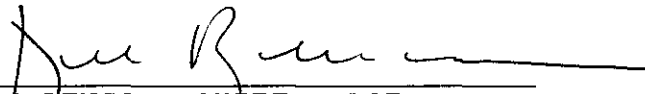
⁴See Rivera v. Allin, 144 F.3d 719 (11th Cir. 1998).

this action without paying the filing fee unless he can show an imminent danger of serious physical injury.⁵ He has made no such allegation or showing.

IT IS THEREFORE ORDERED that this complaint be dismissed under 28 U.S.C. § 1915(g) with no further notice to Plaintiff unless he pays the full \$350 filing fee within thirty days.

DATED this 12th day of September, 2006.

BY THE COURT:



DEE BENSON, CHIEF JUDGE
United States District Court

⁵See 28 U.S.C.S. § 1915(g) (2006).

In the United States District Court
for the District of Utah, Central Division

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

JOHN A. CAMPBELL,

Plaintiff,

vs.

S.S. ADMINISTRATION,

Defendant.

SEP 13 2006

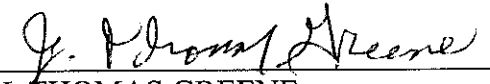
MARKUS B. ZIMMER, CLERK
BY
DEPUTY CLERK

ORDER OF RECUSAL

Case No. 2:06 CV 755

I recuse myself in this case, and ask that the appropriate assignment card
equalization be drawn by the clerk's office.

DATED this 13th day of September, 2006.


J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

| | | |
|-----------------|---|--------------------------------|
| DIANE M. FRITZ, |) | |
| |) | |
| Plaintiff, |) | Case No. 2:06-CV-756 DAK |
| |) | |
| v. |) | District Judge Dale A. Kimball |
| |) | |
| DEA et al., |) | O R D E R |
| |) | |
| Defendants. |) | |

Plaintiff, Diane M. Fritz, filed a prisoner civil rights complaint and asked to proceed *in forma pauperis*.¹ This Court, however, will not let an inmate proceed *in forma pauperis* if the inmate has, at three or more prior times while incarcerated, brought an action that was dismissed as "frivolous or malicious or fail[ing] to state a claim upon which relief may be granted."² The only exception is if the inmate can show that he or she is "under imminent danger of serious physical injury."³

Plaintiff has filed several previous civil actions with the federal courts, many of which have been dismissed as frivolous or failing to state a claim.⁴ Plaintiff therefore may not maintain

¹See [42 U.S.C.S. § 1983 \(2006\)](#); 28 *id.* § 1915.

²28 *id.* § 1915(g).

³*Id.*

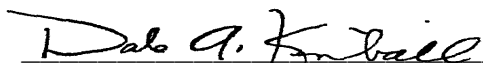
⁴See *Fritz v. Fritz*, No. 2:04-CV-330-TS (D. Utah Nov. 18, 2004) (unpublished); *Fritz v. Larson*, No. 2:04-CV-361-TS (D. Utah June 22, 2004) (unpublished); *Fritz v. Olverson*, No. 2:04-CV-377-TS (D. Utah June 9, 2004) (unpublished).

this action without paying the filing fee unless she can show an imminent danger of serious physical injury.⁵ She has made no such allegation or showing.

IT IS THEREFORE ORDERED that this complaint be dismissed under [28 U.S.C. § 1915\(g\)](#) with no further notice to Plaintiff unless she pays the full \$350 filing fee within thirty days.

DATED this 14th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL
United States District Court

⁵See [28 U.S.C.S. § 1915\(g\) \(2006\)](#).

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
**In the United States District Court
for the District of Utah, Central Division**

SEP 13 2006

JOHN A. CAMPBELL,

Plaintiff,

vs.

S.S. ADMINISTRATION,

Defendant.

MARKUS B. ZIMMER, CLERK

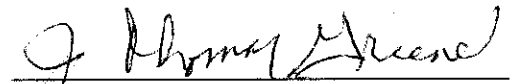
BY _____
DEPUTY CLERK

ORDER OF RECUSAL

Case No. 2:06 CV 758

I recuse myself in this case, and ask that the appropriate assignment card
equalization be drawn by the clerk's office.

DATED this 13th day of September, 2006.


J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

FILED IN UNITED STATES DISTRICT COURT DISTRICT OF UTAH
In the United States District Court
for the District of Utah, Central Division
SEP 13 2006

JOHN A. CAMPBELL,

Plaintiff,

vs.

MUNICIPALITY OF BRICK, NJ, et.al.,

Defendants.

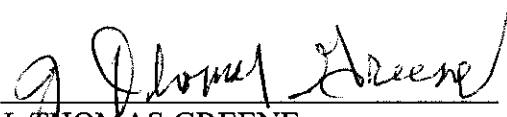
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

ORDER OF RECUSAL

Case No. 2:06 CV 772

I recuse myself in this case, and ask that the appropriate assignment card
equalization be drawn by the clerk's office.

DATED this 13th day of September, 2006.


J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

2006 SEP 13 P 2:28

* * * * *

JUDY DAVILLA, *on behalf of herself and all
others similarly situated,*

Plaintiff,

v.

THINLINE COLLECTIONS, BURTON LAW)
OFFICE, KENNETH W. BURTON,)

Defendants.)

Case No. 2:06MC49 DS

ORDER OF
ADMINISTRATIVE CLOSURE


* * * * *

The court having been informed by counsel that the California case on which this motion to quash was based has been dismissed, this court sees no reason to maintain this case in active status. Therefore, for administrative purposes in managing the court's pending docket, the court hereby orders that the case be closed.

This case may be reactivated, however, upon written request by counsel for any party. Such request, when sent to all parties of record and granted by the court, shall serve to revive the case without the necessity of refiling documents or submitting additional filing fees.

DATED this 13th day of September, 2006.

BY THE COURT:



DAVID SAM

SENIOR JUDGE

UNITED STATES DISTRICT COURT